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PRESIDENT

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WESTERN CONSULTANTS COMPANY, 1947-1948
Percentage of the Company's Investment
of the State, 1947-1948.



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Maryland Room
University of Maryland Library
College Park, Md

CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capital

Annapolis, Maryland

November 27, 1967 - 2:00 p.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

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1 THE PRESIDENT: The Sergeant at Arms will
2 clear the aisles and close the doors.

3 The Convention will please come to order.

4 The invocation today will be offered by the
5 Reverend Alphonse Rose, of St. Margaret's Catholic Church,
6 in Bel Air, Harford County.

7 Reverend Rose is a cousin of Delegate Vecera.

8 Reverend Rose.

9 REVEREND ROSE: Ladies and gentlemen, I would
10 like to begin first by reading a few sentences from the
11 Scripture. This is from Paul to the Athenians.

12 Live life, then, with a due sense of responsi-
13 bility, not as much who do not know the meaning
14 and the purpose of life, but as those who do. Make the
15 best of your time, despite all the difficulties of these
16 days. Don't be vague, but firmly grasp what you know
17 to be the will of the Lord.

18 Let us pray.

19 Oh God, your word remind us of the great personal
20 responsibility which devolves upon us here in this
21 chamber. To be a representative of the people is not

1 easy. One is expected to satisfy so many. Yet one thing
2 is necessary -- that we satisfy you. This will be the one
3 question that we shall all have to answer when our
4 careers finally come to an end. Give us prudence and
5 insight to fulfill our duties as representatives of the
6 people with a good conscience. Let us be honorable
7 in all our dealings, pursuant of the common good in all
8 our deliberations, motivated by principle in all our
9 actions. Let us seek Your help more often in prayer.
10 Send Your Holy Spirit to guide us, particularly in those
11 dark hours when the right course is not so clear.

12 Help us to understand that free speech is Your
13 gift, and we have no right to be quiet through pride,
14 cowardice, negligence or prejudice, but when the occasion
15 demands, we must weigh our words in the sight of the
16 Lord.

17 The lives and happiness of many depend on good
18 representatives. There is so much to do for good. Let
19 me not compromise but be motivated by the love You have
20 shown for me. Amen.

21 THE PRESIDENT: Thank you.

1 Roll call.

2 (Whereupon, a roll call was taken)

3 THE PRESIDENT: The Clerk will record the roll
4 call.

5 There being a quorum present, the Convention
6 is in session.

7 The Chair desires to announce that the entire
8 membership of the Committee on the Executive Branch,
9 with the exception of Delegate Powers, who is in the
10 Chamber, is meeting, or continuing a meeting begun quite
11 some time ago in its committee room in this building.

12 The President has given his permission to that
13 committee to continue its meeting during this session,
14 in an effort to resolve some very pressing problems.

15 The Chair will give to the journal clerk the
16 list of the members of the committee who are present at
17 the meeting at this minute and ask that they be recorded
18 as present.

19 Are there any other reports of committees?

20 Delegate Kiefer?

21 DELEGATE KIEFER: Mr. President, I rise to

1 a point of personal privilege.

2 I would like to introduce the 128 students
3 from Woodlawn Senior High School who are with us in the
4 balcony, and their three teachers, Garland Brown, Holmes
5 Clay and Harry Graybill. They have been here, they have
6 seen and observed some of the things that are going on and
7 I understand will observe this session for the next hour or
8 so.

9 THE PRESIDENT: Delighted to have them present.

10 The Chair recognizes Delegate Johnson for the
11 purpose of making an announcement.

12 DELEGATE JOHNSON; Mr. President and fellow
13 delegates, I rise to a point of personal privilege, in
14 spite of the devastating defeat of the minority report
15 of the Judicial Branch last week, I am proud to say at
16 least one of our members stayed in there and kept on
17 pitching over the long weekend we just enjoyed.

18 I am very pelased to have the honor to announce
19 the single victory of Delegate Susan Kahl, who moved one
20 step closer to the envied position of housewife, by recently
21 becoming engaged to be married to Mr. Thomas Phoebus

1 of the Baltimore Orioles, the 1967 American League
2 Rookie Pitcher of the Year.

3 I am certain that you will be happy to join me
4 in wishing this fine couple every happiness. (Applause)

5 THE PRESIDENT: Delegate Johnson.

6 DELEGATE JOHNSON: Mr. President and ladies
7 and gentlemen, I feel that we have not lose a delegate
8 but gained a 20-game winner.

9 THE PRESIDENT: The Chair wishes ho recognize
10 the presence of 154 students from Kensington Junior
11 High School in Montgomery High School. Delighted to have
12 them with us also. (Applause)

13 The Chair recognizes Delegate Burdette for
14 the purpose of making an announcement.

15 DELEGATE BURDETTE: Mr. President, under the
16 heading of personal privilege, I should like to call
17 the attention fo the Convention to the birthday today
18 of a distinguished delegate from Baltimore County. Dr.
19 Clinton I, Winslow has been for 40 years an eminent
20 professor in this state. He is an alumnus, among other
21 schools, of the University of Nebraska.

1 When I was a student there more than 30 years ago,
2 his name was already legendary for scholarship and for
3 integrity.

4 I have been studying his works and his words
5 for a third of a century, and I should like to have the
6 privilege, Mr. President, of asking the Convention to
7 join on this birthday in tribute to Dr. Winslow's long and
8 continuing service to our state and country. (Applause)

9 THE PRESIDENT: For what purpose does Delegate
10 Bard rise?

11 DELEGATE BARD: I would like to rise on the question
12 of personal privilege, Mr. Chairman.

13 THE PRESIDENT: State your privilege.

14 DELEGATE BARD: First, I would like to second
15 the statement with regard to Dr. Winslow and secondly,
16 I would like to announce the presence of Mrs. Bard, who
17 is here today, because we had the privilege of celebrating
18 belatedly our wedding anniversary. We could not celebrate
19 it on time because of the Convention. She is present
20 today. (Applause)

21 THE PRESIDENT: The Chair recognizes Delegate

1 Powers, Chairman of the Committee on Calendar and Agenda.

2 DELEGATE POWERS: Mr. President, I move that
3 today's calendar be amended so as to include the resumption
4 of consideration of Committee Recommendation No. GP-4,
5 Consumer Protection, and as amended I move the adoption
6 of today's calendar.

7 THE PRESIDENT: Is there a second?

8 (Whereupon, the motion was seconded.)

9 THE PRESIDENT: All in favor signify by saying
10 Aye; contrary, No. The ayes have it. It is so ordered.
11 The calendar is adopted.

12 Are there any reports of other standing committees?

13 (No response)

14 THE PRESIDENT: Any motions or resolutions?

15 (No response)

16 THE PRESIDENT: There has been distributed
17 today a memorandum to accompany Delegate Proposal No.
18 433 by Delegate Finch.

19 The Chair recognizes Delegate Powers.

20 DELEGATE POWERS: Mr. Presidnet, I move the
21 Convention resolve itself into the Committee of the whole

1 for the purpose of considering orders of the day.

2 THE PRESIDENT: Is there a second?

3 (Whereupon, the motion was seconded.)

4 THE PRESIDENT: All in favor signify by saying
5 Aye; contrary, No. The Ayes have it; so ordered.

6 (Whereupon, at 2:15 o'clock p.m., the Convention
7 resolved itself into the Committee of the Whole.)

8 (The mace was removed by the Sergeant at Arms.)

9 THE CHAIRMAN: The Committee of the Whole will
10 please come to order.

11 The Chair recognizes Delegate Boyer, Chairman
12 of the Committee. Do you wish to continue with the
13 presentation of the report, or do you desire to have
14 Delegate Key continue? She is not in the chamber,
15 apparently.

16 DELEGATE BOYER: Mr. Chairman, by way of explanation,
17 I explained this to the Chairman last weekend, so
18 there is no misunderstanding, the calendar was amended
19 late in the day on Wednesday, when we adjourned, and I
20 explain to the Chairman that not knowing that GP-4 was
21 coming up at the time that I had accepted an invitation to

1 speak to several Lions Clubs, in trying to explain the
2 Constitutional Convention, and at 4:30 I would have to
3 excuse myself. I then asked the Chairman, the Vice
4 Chairman of the Committee to make the presentation.
5 Delegate Wheatley was indisposed at the time. Delegate
6 Key is the Chairman of the Subcommittee that hammered out
7 this article, GP-4, on consumer protection, and for that
8 reason and no other reason Delegate Key made, I understand,
9 a very excellent presentation.

10 Mr. Chairman, I turned over to her my file,
11 my notes on this, and I understand she is not presently
12 here. I would be very happy to -- just a minute. I
13 understand she just came in. Could I have about a one-
14 minute recess?

15 THE CHAIRMAN: Certainly.

16 Delegate Boyer?

17 DELEGATE BOYER: Mr. Chairman, I have just
18 talked with Delegate Key and I understand that the presenta-
19 tion on the consumer protection article has been completed,
20 and at this stage she will be probably ready to answer
21 any questions.

1 THE CHAIRMAN: I think we were about completed
2 but there may have been a few other questions of the
3 Committee Chairman.

4 Are there any further questions of the Committee
5 Chairman in connection with the committee's report on
6 Committee Recommendation No. GP-4?

7 Delegate Della?

8 DELEGATE DELLA: Delegate Boyer--

9 THE CHAIRMAN: Just a second.

10 Delegate Key, there are apparently some additional
11 questions. If you would come up to the reading desk, I
12 think it might help us.

13 Delegate Boyer, you will be here also, or do
14 you want Delegate Key to have it?

15 DELEGATE BOYER: Let's make this a joint effort.
16 I do not want to be redundant in wasting the committee's
17 time by repeating what has already been said.

18 THE CHAIRMAN: Delegate Della, if you will
19 state your question, please.

20 DELEGATE DELLA: Delegate Key, did your
21 committee take into consideration that the Legislative

1 Council passed legislation covering this subject matter?

2 DELEGATE KEY: Yes, Delegate Della, we did,
3 and --

4 THE CHAIRMAN: Delegate Della --

5 You may proceed, Delegate Key.

6 DELEGATE KEY: As I said the previous evening, they
7 had made a beginning, but as you look at what they
8 passed as compared to what the Legislative Council
9 proposed, you can see that there is some need for some
10 base on which the legislature could feel free to act.

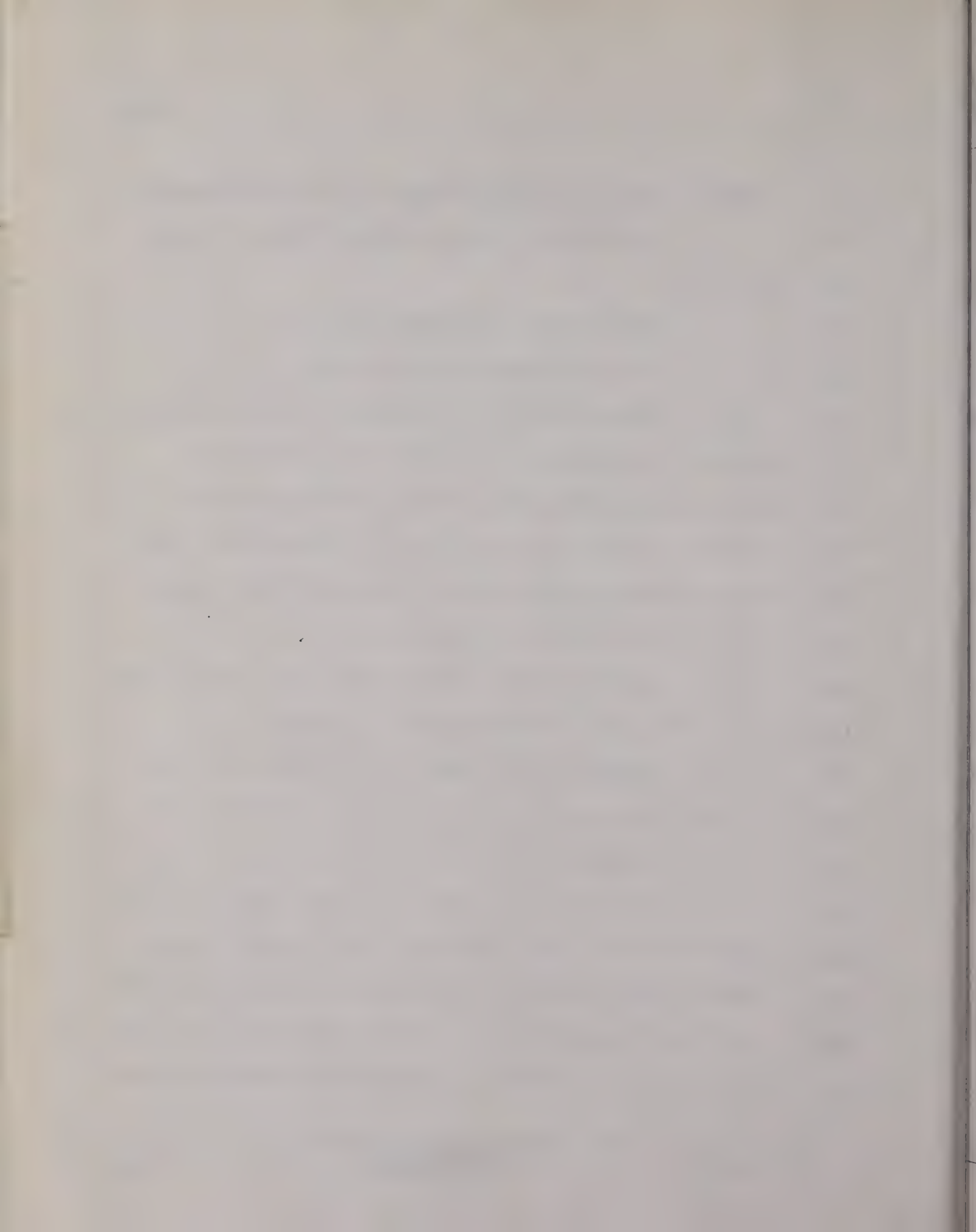
11 THE CHAIRMAN: Delegate Della.

12 DELEGATE DELLA: What base do you have in mind,
13 other than what they have already passed on?

14 DELEGATE KEY: What kind of legislation are
15 we interested in other than that they passed on?

16 DELEGATE DELLA: That is right.

17 DELEGATE KEY: Well, what they passed in the
18 beginning, and if they themselves have looked further
19 into the need for other legislation, as we see from the
20 Legislative Council report on meat inspection laws; the
21 only problem is, without a constitutional mandate or the



1 stipulation given in the constitution to act, there is
2 always the problem of the legislature maybe not being
3 free to do as much as they feel they should do and passing
4 a watered-down version.

5 THE CHAIRMAN: Delegate Della.

6 DELEGATE DELLA: What does your proposal say, that
7 they will not have a watered-down proposal or law?

8 THE CHAIRMAN: Delegate Key.

9 DELEGATE KEY: The article we would like to see
10 included simply states that they will have the law to take
11 care of the situation.

12 THE CHAIRMAN: I do not think you understood
13 the question. I think what he was asking was where
14 in your proposal, Committee Recommendation GP-4, is there
15 anything that would say the legislature could not pass
16 what you referred to as a watered-down version? Is that
17 your question, Delegate Della?

18 DELEGATE DELLA: Yes.

19 DELEGATE KEY: No place, no. This is still
20 possible, certainly, but hopefully, with this mandate,
21 they will be bolder and more courageous and do the

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1 complete job.

2 THE CHAIRMAN: Delegate Harry Taylor.

3 DELEGATE H. Taylor. Mr. Chairman, I would like
4 to ask Delegate Key a question.

5 THE CHAIRMAN: Delegate Taylor.

6 DELEGATE H. TAYLOR: Delegate Key, does this
7 proposal go to preventing abuses in the credit field,
8 where merchants sell goods and charge on a credit basis
9 much more than the value of the goods that are sold because
10 people cannot pay cash?

11 DELEGATE KEY: This would cover, the laws that
12 would result from this article would cover such unfair
13 practices, yes.

14 THE CHAIRMAN: Delegate Grant.

15 DELEGATE GRANT: Delegate Key, do you anticipate
16 that the General Assembly would use this as a basis for
17 criminal statutes as well as civil statutes?

18 DELEGATE KEY: If they usually do so in the
19 present constitutional articles, I would expect them
20 to do whatever is the general procedure, yes.

21 THE CHAIRMAN: Delegate Grant.

1 DELEGATE GRANT: Could you then tell me whether
2 the word "harmful" and the word "unfair" have ever
3 received any court interpretation or are they words
4 just chosen by the committee?

5 DELEGATE KEY: I do not know about court inter-
6 pretation. One moment.

7 Well, as I said, I do not know of any court
8 interpretation, but using the word harmful, as well as
9 unfair, we chose these words specifically after looking
10 them up in the dictionary to mean exactly as we have
11 stated here, meaning health, safety, et cetera.

12 THE CHAIRMAN: Delegate Grant.

13 DELEGATE GRANT: Would you anticipate that if the
14 court was to interpret these words that they should be
15 guided by your Committee Memorandum GP-4?

16 DELEGATE KEY: I think so.

17 THE CHAIRMAN: Are there any further questions?
18 Delegate Marvin Smith.

19 DELEGATE M. SMITH: I have a question I would
20 like to propound to the Chairman, who I think is best
21 able to answer this question. I would like to know,

1 Mr. Chairman, just what specific power this would give
2 to the General Assembly that it does not already have under
3 the general police power.

4 THE CHAIRMAN: Delegate Boyer?

5 DELEGATE BOYER: Probably no specific power that
6 it does not already inherently have, Delegate Smith.

7 It was merely an intention of broad policy
8 statement that this convention go on record that there
9 should boldly and courageously be some action on the part
10 of the General Assembly by constitutional mandate. There
11 is no additional grant of power.

12 THE CHAIRMAN: Are there any further questions?
13 Delegate Borom?

14 DELEGATE BOROM: Mr. Chairman, I would be
15 interested in knowing whether in the course of your delibera-
16 tions in the formation of this particular section, did you
17 have any legislators come and testify before your committee?
18 Was the basis of their presence before your committee
19 the basis on which you drew this particular section?
20 What qualifying information do you have through them?

21 DELEGATE BOYER: None, sir. This arose out

1 of several proposals introduced by interested delegates
2 at this convention and had been referred to the General
3 Provisions Committee.

4 In the process of the courtesy and attention that
5 each of these delegate proposals deserved, this came
6 to our attention. We then took the three or four
7 proposals encompassing this field and tried to blend them
8 together into some harmonious policy statement that the
9 General Provisions Committee by a majority vote felt
10 should be in the constitution.

11 THE CHAIRMAN: Delegate Borom.

12 DELEGATE BOROM: Then I would be interested in
13 what testimony the committee did hear that influenced
14 its decision to bring this particular section out
15 to the floor, and the second part of the question, I
16 would like to know what the committee vote was on this
17 particular section.

18 DELEGATE BOYER: Answering your first question,
19 naturally we heard from all of the individual delegaets
20 of this Convention who had introduced their proposals,
21 and this was rather voluminous, but we heard in detail

1 from them. Then we had before us the Assistant Attorney
2 General, Norman Polovoy, who, as you know, is the
3 Attorney General assigned the head of the Consumer
4 Protection law that was just passed by the General Assembly
5 this year, and Mr. Polovoy appeared before us and gave
6 some very pointed and enlightening remarks of what
7 he thought, and why this should be in the constitution.

8 In answer to your second question, when we first
9 considered this, we had the basic question, should this even
10 be in the Constitution, and at that time there were
11 nine members present and the vote was six to three that
12 there should be something in the constitution protecting
13 consumers. Then after discussion and hearing from the
14 different proponents of it, I must say that none appeared
15 in opposition to it, but after hearing from the proponents,
16 we did take a vote -- I do not have it here; if you will
17 give me a minute or so I can look it up -- but as I recall
18 it was about a 9 to 3 or 4 vote for the adoption of this
19 GP-4.

20 THE CHAIRMAN: Delegate Borom.

21 DELEGATE BOROM: One further question: You

1 mentioned Mr. Polovoy did testify before your committee.
2 You also stated earlier that this particular section
3 gives no more to the General Assembly than it already
4 inherently has in the way of power to act on behalf of
5 consumer protection. What was Mr. Polovoy's feeling?

6 Did he think that by including such a section
7 in the Constitution that the efforts of his department
8 would be strengthened or enhanced in any way at all?

9 DELEGATE BOYER: So that there is no misunderstanding,
10 ing, I don't believe, or I did not intend to say that
11 this does not give the General Assembly anything it does
12 not have. I was trying to answer Delegate Smith
13 specifically, did it enlarge the police power of the
14 General Assembly and my answer to that was negative.

15 Attorney General Polovoy was interested in
16 seeing that this was included in the Constitution, so that
17 there could be no mistake about the protection of the
18 consumer, so that this could help his department out.

19 THE CHAIRMAN: Are there any further questions?
20 Delegate Hardwicke?

21 DELEGATE HARDWICKE: Mr. Chairman of the Committee,
the words "protection" and "education" -- is the

1 definition of those words and the extent to which those
2 concepts shall be implemented, is that completely for the
3 discretion of the legislature?

4 DELEGATE BOYER: I think unless we wanted to
5 make abouta 12-page or a 200-page book trying to spell
6 out an all-inclusive definition of what these words mean,
7 I think that we would have to allow some latitude to
8 the General Assembly to implement this by legislation.
9 It was our intention taht the word "education" was to make
10 clear that the state's duties is not discharged solely
11 by the restriction or punishing of unethical dealers after
12 the fact but must include substantial efforts to assist
13 the public in recognizing an improper transaction before
14 the fact.

15 THE CHAIRMAN: Delegate Hardwicke.

16 DELEGATE HARDWICKE: If this provision is in the
17 new constitution, could the General Assembly decide that
18 no protection for education was necessary at any given
19 time?

20 DELEGATE BOYER: Yes, it could decide that and
21 it could only be upset, I imagine, by challenge of the

1 court test, what this convention meant by these words.

2 THE CHAIRMAN: Are there any further questions?
3 Delegate Burdette?

4 DELEGATE BURDETTE: Mr. Chairman, a question to
5 the Chairman of the Committee: I wonder if the committee,
6 Mr. Chairman, gave consideration to language, or let me
7 put it another way, was there any objection or interpretation
8 of this which has no connotation of even remotely
9 saying that all business is harmful and unfair. It
10 certainly does not say that, but if it were possible to
11 shift language in such fashion -- my real question, did
12 the Committee give any consideration to shifting language
13 in such fashion that the connotation could not be con-
14 strued from it?

15 DELEGATE BOYER: We gave consideration to shifting,
16 the proper wording or verbiage that should be in this
17 particular section. Certainly it was never our intent and
18 I do not think anyone's intent at this Convention that
19 this could be possible, by the slightest scintilla of
20 evidence, that your problem that you arise should come
21 up.

1 We certainly do not intend to include all
2 business. We are not going to penalize the good for the
3 bad.

4 THE CHAIRMAN: Are there further questions?

5 Delegate Bothe?

6 DELEGATE BOTHE: Delegate Boyer, in answer to
7 a question asked Delegate Key on Wednesday, the question
8 being whether this recommendation was intended to cover
9 professional people, lawyers, doctors, accountants,
10 et cetera, she answered in the affirmative, and I as a
11 lawyer am somewhat concerned that there might be some
12 conflict between the regulation of ethical practices in
13 my profession by the Court of Appeals and otherwise by the
14 General Assembly, and the Constitutional provision here.
15 I wondered if you could expand a little bit on what your
16 committee meant when it intended to include professionals
17 as well as business people.

18 DELEGATE BOYER: Delegate Key did give the
19 precise and exact answer, which answered in the affirma-
20 tive. This particular question came up in committee
21 discussion, and it was the intent of the majority of

1 the committee that it should include not only businesses
2 who deal in commodities and tangible goods, but that it
3 should also include professions And businesses that might
4 deal in services, which would, of course, include
5 attorneys and conceivably doctors and other professions.

6 As you know, we have, the Maryland State Bar
7 Association, with its own policing, adequate in my
8 opinion, policing powers, by the grievance committees and
9 other organizations that we could protect our own
10 profession, and police it. It was the majority's intent
11 that this should include services.

12 THE CHAIRMAN: Any further questions?

13 DELEGATE DELLA: Chairman Boyer, would this
14 also apply to the newspapers in condemning the members
15 of the legislature?

16 THE CHAIRMAN: Delegate Boyer.

17 DELEGATE BOYER: There has been some thought
18 that we hope this is so.

19 THE CHAIRMAN: Are there any further questions?
20 If not, the committee Chairman and Delegate Key may
21 return to their seats and we will proceed to a

1 consideration of the committee recommendation.

2 Are there any amendments to the committee
3 recommendation?

4 The Chair hears none.

5 The question arises on the approval of Committee
6 Recommendation No. GP-4. Any delegates desire to speak
7 in favor?

8 Delegate Koger?

9 DELEGATE KOGER: Mr. Chairman, I would like to
10 speak in favor of this proposal.

11 I favor adoption of this committee's Recommenda-
12 tion GP-4 for the protection and education of the citizens
13 of Maryland against harmful and unfair business practices.
14 Civil disorders visited more than 80 U. S. cities last
15 summer, promoting death, destruction, sorrow and con-
16 fusion. Losses totaled many hundreds of millions of
17 dollars.

18 In Detroit, 41 persons died; over 1,000 were
19 injured, 5,000 made homeless, 1,500 businesses looted.

20 In Maryland, and in miniature, Cambridge experienced
21 the same dismal and appalling effects. Why? Why is this?

1 There are many answers.

2 Some say it is a decline of moral standards and
3 sensibilities -- a phase of social order decay; others
4 say population explosion, inferior schools, congestion,
5 unemployment, racial hatred, the hippies and flower children,
6 H. Rap Brown and glue sniffing. I say it is the ugly
7 offspring of poverty and ignorance. His name is
8 Economic Exploitation, better known to the poor and lowly
9 as Broken Promises.

10 We must do something about the economic
11 exploitation of the poor; the broken promises that
12 are not meant to be kept. The delegates to this convention
13 do not have to be worried about being exploited. No
14 one takes advantage of us. We know how to take care of
15 ourselves. This recommendation is not intended to protect
16 us. It is only meant for the poor and downtrodden, because
17 there is profit in the poor. In the capitalistic system,
18 dog eat dog; buyer beware; *laissez-faire*; the poor don't
19 know how to shop, don't know the difference in quality and
20 price. They haven't the slightest knowledge of the cost
21 of credit. These poor, in the televised, billboarded land

1 of plenty want the creature comforts, too; Christmas
2 toys, Easter clothes, Thanksgiving turkey, even a nice
3 used auto to take the family on a July 4th picnic.

4 Every great constitution guarantees the people
5 basic rights, and here is a basic right that is badly
6 needed. We need a mandated right in the market place,
7 which will provide the following: (1) People need rights
8 to health and safety. We have made progress in this right
9 since 1906. (2) People have a right not to be deliberately
10 deceived. Protection against deception in packaging,
11 inferior materials used in home improvements. (3) People
12 need rights against fraud, not to be subjected to criminals
13 in the market place. Ninety-five per cent of businessmen
14 are honest. People should have a right of police force to
15 protect them from the dishonest five per cent. (4) People
16 need the rights against psychological subjugation.
17 Hypnotism in advertising undermines the citizens. (5)
18 People have a right to be educated for the market place.

19 Yes, they have places to complain: U. S.
20 Department of Weights & Measures, People's Court, Better
21 Business Bureau, Public Service and Insurance Commissions,

1 Attorney General, et cetera, but alas, they do not know
2 how to complain. They lack the understanding, the
3 education. They do not have the initiative. They cannot
4 take back the television with the cracked tube, because
5 they cannot find the door-to-door salesman. The bank who
6 financed it says it is not responsible for the product
7 and the money was lent in good faith. There is not a thing
8 that the Charley Brown of Detroit and Cambridge can do but
9 get mad, mad, mad with himself for being ignorant and a fool,
10 mad with his neighbor and society who condones profiting
11 on the poor, mad with a government which ignores broken
12 promises to the poor, and has no laws that provide for his
13 education and protection against harmful and unfair business
14 practices.

15 I hope we delegates are smart and will rise
16 to this occasion. People need and want this consumer
17 protection. Our economy knows what it means to give a man
18 what he wants. Our economy knows it pays to produce the
19 highest quality and at the best price.

20 Approval of this recommendation will aid
21 Maryland's economy and attract to this state the finest

1 people and businesses in the years to come, for in Maryland
2 they have the added right: Rights in the Market Place.

3 THE CHAIRMAN: Do any delegates desire to speak in
4 opposition to the recommendation?

5 Delegate Marvin Smith?

6 DELEGATE M. SMITH: Mr. Chairman, I take a back
7 seat to no one when it comes to protecting the rights
8 of the consumer, and even while we have been in session here,
9 sir, I have used the tool of the Maryland/Sales Act of
10 1941 to protect consumers, but I submit to you, sir, that
11 when we write this into the Constitution, we are doing
12 the same thing that the Constitutional Convention of 1867
13 did when it put such things as the Wreckmaster for Worcester
14 County into the Constitution.

15 We are holding out a promise to people which
16 may not necessarily be kept. As has been indicated by the
17 Chairman of the Committee, this grant, this provision will
18 not increase one iota the power of the General Assembly.
19 The General Assembly has ample power to legislate on
20 the subject. The General Assembly should legislate on the
21 subject. I am distressed by the comment of the Chairman

1 of the Committee that the courts have power to compel the
2 passage of law. This is a new concept so far as I am
3 concerned. That was one of my reasons for voting against
4 the provision on natural resources.

5 I submit to you, Mr. Chairman, that this is not
6 a necessary provision in the Constitution, and I do not
7 wish to take away from the people who need protection
8 one bit of protection, but this will not protect them.

9 THE CHAIRMAN: Delegate Wheatley.

10 DELEGATE WHEATLEY: Mr. Chairman, ladies and
11 gentlemen of the committee, it gives me a great deal of
12 pleasure at this time to speak on behalf of this proposal.
13 Originally when I first saw this proposal introduced
14 I had an impression this was purely statutory. I was
15 laboring under the impression at that time that we were
16 thinking in terms of what might be in modern jargon
17 called a mini-constitution, but since that time my
18 views have changed drastically. Thus far I have seen no
19 objection to this proposal on the merits. I have not
20 heard one person yet say they are against this concept.
21 So now we are trying to decide whether or not it is

1 suitable for a constitution. I ask you today, who is
2 to judge what is suitable for a constitution? Each one
3 of us as individuals have to decide that. It is not
4 a question of law per se. Many of these things are optional,
5 one way or the other. It is a question of value judgments.
6 Where do you place your sense of value?

7 Is it because of the number of people who are
8 affected? I have to disagree with my good friend,
9 Delegate Smith, on this when he says that it is too par-
10 ticularized. All of us are consumers, I submit. We were
11 talking about before special groups, farmers, lumbermen,
12 miners. We are all consumers. There is no reference
13 to a particular religion or economic status. I disagree
14 somewhat with Delegate Koger. This protects the rich
15 as well as the poor man. I make reference to Delegate
16 Case's remarks when he said many, many people were
17 swindled by savings and loan scandals. People had hundreds
18 of thousands of dollars, not just the poor man. Would it
19 be better for us to spell it out, paragraph by paragraph,
20 ten or twelve pages? We do not need that. We need a
21 clear mandate to the legislature that we believe this

1 is important enough for them to take specific action.
2 The principle is certainly involved and I am for the
3 principle.

4 Something for the people, we have heard said, and
5 I believe this is something for the people, people who are
6 not so concerned with unicameral or bicameral, whether
7 there will be four tiers or three tiers, but people who
8 are concerned that there is a clear enunciation of the
9 right of citizens to enjoy a protection from unscrupulous
10 business practices, unfair business practices that have
11 been defined in many court decisions.

12 The interpretation is elastic. That is the
13 way it should be. I say the savings and loans of the past,
14 existing financing practices, so-called debt management,
15 food and meat inspection of an intrastate nature, unscrupu-
16 lous sales in many areas, do a discredit to the business
17 community of legitimate business men who want this kind
18 of protection, as evidenced by a recent editorial
19 over the weekend. This is not figured by any legitimate
20 businessman. The people want it.

21 I wish to commend the legislature for their

1 past acts and to remind them of their continuing responsi-
2 bility in this field.

3 Let's give the people the benefit of the doubt,
4 if there is any doubt as to whether this should be
5 included in the constitution.

6 We were told we should not hold out a promise
7 to them. I believe we should hold out a promise to them,
8 that the Constitution is designed to hold promises for the
9 future, as well as past accomplishments.

10 I say set goals that can be reached, maybe
11 general, maybe vague, but I am convinced the truth
12 in finding is seeking and this convention should set
13 goals which the electorate will accept at the polls
14 and that is the reason I am voting for this proposal.

15 THE CHAIRMAN: Any delegate desire to speak
16 in opposition?

17 Delegate Schneider?

18 DELEGATE SCHNEIDER: Mr. Chairman, I would not
19 rise to speak to this proposition except for the fact
20 that 21 of us voted against the Natural Resources
21 Commission. I felt very strongly in favor of natural

1 resources and preservation thereof and I feel very
2 strongly in favor of consumer protection, but I do not
3 feel in favor of putting toothless provisions in our
4 Constitution just because we agreed on policy.

5 I imagine we could come up with several hundred
6 policy statements and things we think are good in nature
7 and good policy, but to start putting all these in the
8 constitution, if we are going to have a constitution which is
9 so long it is going to read like a dictionary, and if we
10 do not put these other policy considerations in, doesn't
11 that mean perhaps by exclusion that we think that they
12 are important, or are less important? I do not think many
13 of these things are less important.

14 I really think that this is something which, if
15 we are going to put anything in there about consumer
16 protection, we had better be specific and just put a
17 little bit specific rather than just a general exhortatory
18 phrase of our policy and our concern with consumer pro-
19 tection.

20 I am sure that the legislature is well aware
21 that the public does not like deceptive packaging,

1 deceptive pricing, tainted meats or anything of that nature.
2 It would be completely ridiculous if the public were in
3 favor of these things. I do not think the legislature
4 needs us to put a provision in the Constitution to give
5 them any guidance. I would vote against this for that
6 reason.

7 THE CHAIRMAN: Delegate Bennett?

8 DELEGATE BENNETT: Mr. Chairman, members of the
9 Convention, I suppose we are debating here a fundamental
10 principle of constitutional drafting. We are trying to
11 decide here what is a subject of constitutional dimension,
12 a word that I have heard bandied about ever since I have
13 been here.

14 How do you determine what is the basis for
15 measuring this dimension? Do you determine it upon the
16 basis of the number of people, the number of citizens
17 involved? If that be your criterion, then of course
18 consumer protection will yield to no other problem.
19 If you measure it upon the basis of the effect it would
20 have upon the underprivileged, the disadvantaged, the
21 credit buyer, if you please, then of course it is of

1 constitutional dimension.

2 If you base it upon succinctness -- I have heard much
3 talk about things to be succinct; could anything be more
4 succinct than this provision? I think not. Would something
5 of this kind be enforceable if enacted by the legislature?
6 I certainly think it would.

7 Now, there are other precedents in this
8 constitution that we are drafting of a similar nature. I call
9 your attention, my fellow delegates, to what we have
10 already done with regard to the structure of county
11 government, where we say in Section 7.03, within one year
12 following the adoption of this constitution the General
13 Assembly shall provide by public general law a choice of
14 procedures by which an instrument of government of a
15 county may be proposed.

16 That is directed, and whether the legislature
17 does or not is open to perhaps some subsequent decisions.
18 The legislature may not be capable of drafting a model
19 county charter.

20 In our proposed article relating to suffrage,
21 we state the General Assembly shall make certain laws with

1 regard to registration, with regard to residence,
2 et cetera. That is a mandate, just as clear as anything can
3 be and I predict to you before this convention is over
4 there are going to be many other mandates to this legis-
5 lature, and I think, if I can repeat again, without belabor-
6 ing the arguments of those who support this thing, that
7 here we have a problem of great proportions, and it
8 depends, as Delegate Wheatley says, upon your value concepts,
9 as to whether you shall undertake the provision of this
10 kind in the constitution, and certainly we must do that
11 if we are to carry out our responsibilities to those
12 who are most in need of consumer protection.

13 Thank you.

14 THE CHAIRMAN: Any other delegate desire to
15 speak in opposition to the recommendation?

16 Delegate Mentzer?

17 DELEGATE MENTZER: I am an employee of Kiplinger,
18 Washington Editors, with whose weekly business letters
19 some of you may be familiar. You may not know they
20 also publish a weekly magazine, Changing Times, which
21 stresses education in many fields. I speak as a

1 housewife who realizes the need for and supports
2 federal aid to education in this field. I feel, however,
3 our job here is to debate and devise a structure of
4 state government and not to supply courage or spurs to
5 the legislature to do its job, and I intend to vote against
6 this provision.

7 THE CHAIRMAN: Delegate Borom.

8 DELEGATE BOROM: Mr. Chairman, fellow delegates,
9 not too long ago this convention approved a section of
10 the constitution which we are working on which deal with
11 natural resources. I think your action there represented
12 your recognition that not only the State of Maryland, but
13 across the United States, our natural resources have
14 been exploited. Today we are talking about human beings.
15 We are talking about exploitation. Now if we could
16 give the kind of consideration to natural resources, trees,
17 hillsides, countrysides, waterfronts and all, and
18 cannot really take the time to recognize we are talking
19 about the citizens of the state of Maryland. They are
20 resources, human resources. They are as important, if
21 not more important than the green countryside that we

1 voted not too long ago to mandate the General Assembly
2 to look out for and take care of. We are talking about
3 exploitation. We are in a different time than we were
4 in 1941. Madison Avenue, high-pressure tactics are things
5 that we all live with. I am not talking about the poor
6 people. I would classify anybody with an income of
7 \$15,000 or less as available to the sharp business prac-
8 tices, and if any of you who sit here today think that
9 this has no relevance to you, if you have not had the
10 experience, I suggest you stop and give it a second
11 thought. We are talking about human beings in the state
12 of Maryland. We are not talking about whether the Federal
13 Government itself ought to take the regulatory action. We
14 are talking about the State of Maryland.

15 We had some speeches earlier in the Convention.
16 We have had speeches subsequently saying that if we write
17 this constitution, we want to strengthen state government
18 in Maryland. We do not want to lean back on the Federal
19 Government. For that reason I say we cannot wait for
20 the Federal Government to take charge in regulating
21 business practices. I think you have to keep in mind we

1 are talking about the citizens of the State of Maryland.
2 Whether we should include this in the constitution or not
3 I think is a question that each of us is struggling with.
4 I have struggled with this question myself. We talk about
5 what is in the present constitution, that from a historical
6 perspective has no meaning for us.

7 I say let's not try to write a constitution that
8 will last a hundred years. Let's write it for now. If
9 we have to do it again in 25 years, let's do so. I think
10 our Constitution should reflect problems we live with
11 today. We cannot predict what will happen a hundred
12 years from now. If exploitation is one thing we are living
13 with, then let's try to deal with it in our Constitution;
14 otherwise we will come up with what I think is a very
15 sterile constitution and it will have no meaning, no
16 being, no essence, and we are going to have to try to
17 persuade the voters to vote for this constitution in May.

18 We should not have a sterile document. You will
19 have to drag the voters out to the polls to vote for
20 or against it. If they do not understand what we have
21 done here, and they cannot feel we have attempted at least

1 to look out for their interests through the constitution,
2 then I would say forget it. You are only building a consti-
3 tution that will fall into the hands of legal mumbo-jumbo
4 and have no meaning to the average person. I say let's
5 put a little heart in this constitution. Let's write it
6 for a brief period but let's write it so it will have
7 some effect on the people who live in this state.

8 THE CHAIRMAN: Any other delegate desire to
9 speak in opposition?

10 Delegate Winslow?

11 DELEGATE WINSLOW: Mr. Chairman, fellow dele-
12 gates, I, too, am a consumer. I suspect that as of today
13 I have been a consumer longer than anyone else in this
14 room. Moreover, I have had some interest in the protection
15 of the unprotected consumer from unfair business practices,
16 or unfair other kinds of practices, but I should like to
17 say two things with respect to this measure: One, in
18 answer to the gentleman's question a few moments ago, how
19 do you determine what things are of a constitutional nature,
20 I suggest this is rather simple. The purpose of a
21 constitution is to allocate power, not to exercise it, and

1 if we start allocating power in the constitution when
2 the power is already there, we run, unfortunately, into
3 a difficult situation of interpretation. It has long been
4 the practice of the courts of this country to interpret
5 the constitution in such a way that when a power is
6 expressed, the courts interpret that as being the limits.
7 I can see it possible for the courts to take the wording
8 of this provision as now stated and say that it was
9 intended by the Convention that the only protection which
10 the Constitution demands of the legislature in this
11 respect is with respect to the words themselves against
12 harmful and unfair business practices, not other kinds
13 of practices, only business practices.

14 This is going to give the courts some difficulty,
15 and it has already been suggested that there is some
16 question as to whether this includes professional
17 practices.

18 It seems to me that we are on very dangerous
19 ground here if we attempt to do something which may turn
20 out by interpretation of the courts to be something
21 that we did not want.

1 It mayvery well be that the passage of this
2 particular provision will unfortunately leave the
3 consumers in a worse position than that which they now occupy.

4 It seems to me perfectly reasonable to leave this
5 matter of consumer protection along with other kinds of
6 protection where it belongs, which is to say in general
7 assembly.

8 THE CHAIRAN: Any other delegate desire to speak
9 in favor of the proposal?

10 Any other delegate desire to speak against?

11 Delegate Beatrice Miller.

12 DELEGATE B. MILLER: I would like to speak
13 in favor of this proposal. Since 1930 the Federal
14 Government has adopted its responsibility in the realm of
15 economic services and security, in addition to the political
16 area, and we have seen much evidence of consumer legis-
17 lation on the federal level.

18 Ib 1962, President Kennedy sent to the Congress
19 a message proposing a bill of rights for the consumer
20 including the right to safety, the right to be informed,
21 the right to choose, the right to be heard.

 No one can deny that property rights

1 have always been constitutionally protected. I would
2 point out also that there is consumer protection in our
3 present constitution. The 1867 Constitution provides
4 for the regulation of banks, for eminent domain, for the
5 regulation of corporations, for the establishment of a legal
6 right of interest, and declares that monopolies are odious.

7 Now that we are at the point of building a viable
8 state government, we need to be able to meet the challenges
9 and the needs of our citizens today.

10 I cannot think of any one single item that we
11 could put in the new Constitution that would affect more
12 citizens in the state, and I cannot think of any reason why
13 we should exclude something which would make this consti-
14 tution so attractive to them and at the same time make it
15 clear to the General Assembly what we as a body, a
16 constitutional body sitting here propose for them to
17 consider in an ensuing year.

18 I support this resolution.

19 THE CHAIRMAN: Any other delegate desire to speak in
20 opposition?

21 Delegate Carson?

1 DELEGATE CARSON: Mr. Chairman, I advocated and
2 voted in favor of the article, or the section, rather,
3 on natural resources. I did so in large part because
4 the way that section was worded and the way it passed
5 would permit the General Assembly to vary from area to
6 area within the state with regard to conservation and
7 natural resources.

8 As an item in point, for example, starting last
9 week the deer season began and you can now shoot two
10 deer in Dorchester County, I understand, while as to
11 the rest of the state, only one. The recognition that there
12 was a large deer population in that country, I think that
13 is a distinguishing factor between that section and this
14 proposed section.

15 As Dr. Winslow, I am also a consumer. I feel
16 these consumer protecting clauses should be passed, but I
17 suggest the constitutional provision here proposed
18 would add nothing whatsoever and may also detract from
19 the ability of the General Assembly to legislate in
20 this area. Therefore, I urge you to vote against this
21 proposed section.

1 THE CHAIRMAN: Any other delegate desire to
2 speak in favor of the proposal?

3 Delegate Mason?

4 DELEGATE MASON: Mr. Chairman, I rise to speak
5 in favor of this proposal. I realize that the constitutional
6 purists will say that this matter is legislative.

7 I would like to call the attention of this
8 committee to the judicial article that we just adopted,
9 and I am sure that the same constitutional purists will
10 say that this article contains a considerable amount of
11 legislation.

12 I believe there are 28 states that have consumer
13 protection legislation, and New York, which enacted this
14 legislation, I believe, in 1959, in their recent consti-
15 tution included a provision for consumer protection in that
16 constitution.

17 I think this is something that we should also
18 include in this constitution.

19 I concur with the delegate who said, let's put
20 some heart in the constitution, and I suggest that not only
21 should we put some heart, let's put some soul in the

1 constitution so the voters can come out and pass the
2 constitution.

3 THE CHAIRMAN: Delegate Singer.

4 DELEGATE SINGER: Mr. Chairman, fellow delegates,
5 it is with the greatest reluctance that I arise to
6 oppose this proposal.

7 It is not because I am a constitutional purist
8 and it is not because I am opposed to the broad social
9 policy which this provision establishes. I am partly in
10 favor of it.

11 My objection to it is that it is too broad, and
12 that it does not do what the proponents of this proposal say
13 that it does.

14 I fear that it holds out a false promise to those
15 who would support this constitution, possibly because of
16 it, and yet this provision cannot deliver what it promises.

17 It says the General Assembly shall by law
18 provide. This provision cannot be enforced. If we are to
19 present this constitution with this amendment or
20 proposal included in it, in all candor and in all
21 conscience, we must indicate that this provision has no

1 mandatory effect upon the General Assembly. It does
2 not give nor detract from the powers of the General
3 Assembly to enact legislation in this area.

4 In the past it has provided a Consumer Protection
5 Bureau, which is a division of the Attorney General's
6 office. That division is functioning and the committee
7 heard testimony from the Chief of that Division.

8 In certain instances the legislature has acted
9 in this area and much, much needs to be done, but to say
10 that this provision will guarantee that we will have
11 super protection, super education against harmful and
12 unfair business practices simply is not the constitutional
13 guarantee that it purports to be.

14 In the case of 2 Md 341, Watkins v. Watkins,
15 Annotation to Article VIII to the present Declaration
16 of Rights, it was held, the Judiciary may not compel
17 action on the part of a coordinate branch.

18 To say that our Court of Appeals or any court
19 of this state would compel the General Assembly to enact
20 legislation in this area is simply misleading those who
21 would put their faith and trust in this provision.

1 It is for these reasons that I think that this
2 provision should be defeated; not because of what it
3 states or what its object is, but because it does not in
4 truth deliver what it purports to deliver.

1 THE CHAIRMAN: Any further discussion?

2 Delegate Marion.

3 DELEGATE MARION: Mr. Chairman, I have listened
4 carefully to the arguments being made on both sides, and it
5 seems to me that there are some good arguments being made on
6 both sides. Had I been required to cast my vote on this
7 proposal last Wednesday before we adjourned, I think I
8 would have voted against the proposal.

9 I have come to the conclusion that we ought to
10 support it, that this provision ought to be in the
11 Constitution, and I come to that conclusion by this process
12 of reasoning. I think there are basically two arguments
13 that can be raised against the inclusion of a provision
14 like this in the Constitution. One is that you are not
15 in favor of consumer protection legislation at all. I
16 cannot accept that because I am in favor of the consumer
17 protection legislation, if and where appropriate.

18 The second argument is it ought not to be in
19 the Constitution, and I think that is a close question; but
20 I resolve that question in favor of putting the provision
21 in the Constitution, because I believe that by putting it

1 in the Constitution it will set to rest the argument which
2 I first advanced in opposition to it. It will set to rest
3 the argument which is bound to be made in the General
4 Assembly that we ought not have or should not have a
5 particular piece of consumer protection legislation, and
6 I think if we can set that to rest by spelling out in this
7 Constitution that the people of the State want this sort
8 of legislation, it destroys one of the biggest arguments
9 which is bound to be presented against legislation of this
10 sort when it will come to the General Assembly.

11 I support the proposal.

12 THE CHAIRMAN: Does any other delegate desire to
13 speak in opposition?

14 Delegate Needle.

15 DELEGATE NEEDLE: Mr. Chairman, I rise to a
16 point of information. A resolution was introduced before
17 this body sometime ago, which I can't put my finger on at
18 this moment, pertaining to presentments to the General
19 Assembly. I would be curious to know with regard to this
20 and many other questions if the Chair could inform this
21

1 body where that resolution is at present, and if acted
2 upon favorably by this body, just in what manner such
3 presentments would be made to the General Assembly?

4 THE CHAIRMAN: I think you are probably referring
5 to Resolution 16 or 21, I am not certain. I don't have it
6 in front of me. The resolution is still before the Com-
7 mittee. I think it will be withdrawn by the sponsor if
8 it has not already been withdrawn, on the ground that it
9 poses problems for the Assembly, for the Convention, and
10 for the staff, that we cannot meet. It would be virtually
11 impossible for the staff of the Convention or the Committees
12 to comply with that resolution.

13 Delegate Bard.

14 DELEGATE BARD: May I rise to a point of per-
15 sonal privilege on that question?

16 THE CHAIRMAN: You may proceed.

17 DELEGATE BARD: Since I was the sponsor of
18 Resolution 16, I would like to add that after conferences
19 with a number of individuals here, including those in
20 leadership roles, it was determined that it would be best
21 to withdraw the resolution, with all the wisdom that it

1 might have had behind it, because of the time pressure, be-
2 cause it was believed that it might not have been in order
3 for us to leave a memorialized statement for the General
4 Assembly. Therefore, it is withdrawn.

5 THE CHAIRMAN: Delegate Jett.

6 DELEGATE JETT: Mr. Chairman, fellow Delegates:

7 I rise to oppose this suggestion. I feel
8 that it is absolutely my duty to do so, having sat on the
9 General Provisions Committee and listened to the testimony
10 and heard the debates concerning this matter.

11 It is my sincere feeling, and has been, that
12 this is not a Constitutional matter. It is a matter that
13 belongs in the statutes. The legislature has not been
14 unmindful of this problem. It has made a very good attempt
15 to tackle the problem, and when I say this, I say to you
16 that what we are doing here is not putting heart and soul
17 in the Constitution. I think we are putting meaningless
18 phrases and hot air in it. There is no way that I can
19 conceive of that anyone could oppose the concept of this
20 thing, or any way you could oppose any other concept.

21 The consumer we want protected, but I say to you

1 the policing that is implicit in this suggestion is beyond
2 anyone's comprehension. It is an utterly impossible
3 thing to implement, and I say to you that as you get back
4 into your history and into the days of Esau and Jacob, and Esau
5 a notorious consumer, regardless of how you handle this
6 problem or whether that law had been on the books then or
7 whether it will ever go on the books, you can't protect a
8 consumer against himself; and that is what this pretends
9 to do. That is what I think we are holding out, the most
10 indecent hopes to people that we cannot fulfill, and we
11 cannot hope to fulfill, and for that reason, I shall vote
12 against this proposal.

13 THE CHAIRMAN: Delegate L. Taylor.

14 DELEGATE L. TAYLOR: I rise in support of this
15 particular Constitutional proposal, mainly because in 1933
16 President Roosevelt decided to make some reforms to pro-
17 tect consumers at that time.

18 In 1933 the Securities and Exchange Commission
19 was established because so many investors were being
20 defrauded and victimized because of the policies of that day.
21 During that time Mr. Roosevelt was PRESIDENT. He said

1 the buyer should be protected, and at that time, in 1933,
2 an act was passed to provide that people would be protected
3 if stock brokers did not give accurate information to in-
4 vestors, and, of course, at the present time we find that
5 the small man, the small consumer is not protected in the
6 State of Maryland. We find that he needs protection, and
7 of course, this particular Constitutional proposal would
8 give a mandate to the General Assembly.

9 We have certain laws passed by the General
10 Assembly, but at the present time we still find that many
11 important and well-to-do people are unprotected. I feel
12 this will be one way of saying to the public -- in other
13 words, we feel it is not enough to ask the General Assembly
14 to protect the interests of Maryland citizens. I feel that
15 it should be stated Constitutionally. This is why I rise
16 in support of this particular Constitutional proposal.

17 THE CHAIRMAN: Does any other delegate desire to
18 speak in opposition?

19 Delegate Hardwicke.

20 DELEGATE HARDWICKE: I will be brief, Mr.
21 Chairman.

1 This is not a mandate. The Chairman of the
2 Committee himself says that whether there is need for
3 protection is a matter of legislative discretion. If they
4 decide there is no need for discretion he concedes that
5 there will be no need for action.

6 Consequently, by the admission of the Chairman
7 himself, this provision does absolutely nothing.

8 I suggest that we want a Constitution that
9 we will be proud of, that will live through the ages. This
10 is the kind of provision that should be omitted.

11 THE CHAIRMAN: Delegate Sickles.

12 DELEGATE SICKLES: Mr. Chairman, I rise in
13 support of this provision.

14 I share the doubts with him here as to the
15 inherent validity, the inherent power of this provision,
16 but I think it would be an overstatement to say that it
17 will have no impact and no effect whatsoever. I think first
18 it would focus attention of the entire State of Maryland,
19 not only as a result of this colloquy today, but in the
20 course of the actual consideration of the document as we go
21 to the people for its ratification, and also it would focus

1 the attention of the General Assembly on this subject
2 matter once again, and indicate to them what this cross
3 section of the State feels about this particular provision.

4 It can do no harm, and it might very well do
5 some good. I would suggest to you that perhaps we are
6 taking on the role of a lobbyist; but I am content to lobby
7 for consumers, and therefore I shall support this provision.

8 THE CHAIRMAN: Does any other delegate desire
9 to speak in opposition?

10 Does any other delegate desire to speak in favor?

11 Delegate Bard.

12 DELEGATE BARD: Mr. Chairman, I should like to
13 speak in favor of the proposal.

14 Last Wednesday I talked about the importance of
15 consumer protection. Today there has been a good deal said
16 about the fact that some of our best friends are consumers,
17 and then some indication in regard to some aspects of my
18 best friends.

19 I would like for you to note that fundamentally
20 the people who have been pushing harder for this proposal
21 have been those in the area of social welfare, like Mr.

1 Borom, those in the area of education, and there have been
2 some minds that have been concerned with the legalistic
3 aspects and the legalistic doubts. I spoke to Mr. Norman
4 Polovoy over the holiday in connection with what could
5 you do if this were in the Constitution that you could not
6 do now, and here are some pointed remarks that he made in
7 this respect: He said that he handles 300 cases a week,
8 largely concerned with business practices. Other States
9 have moved in this area, the sort of thing which was
10 referred to, which will give security, economic security
11 to the poor, aged, and sick. It is true in Congress they
12 have attempted for a period of eight years without moving
13 ahead. It is also true that those in the Congressional
14 halls have made it clear that you need complementary
15 bills, those passed at the Federal government level, and
16 those passed at the State level.

17 All one need do is read Dr. Koplowitz' study,
18 The Poor Pay More. If you had the privilege of reading
19 this book you would know the poor have no real choice in
20 regard to prices, that they pay a great deal more for the
21 commodities that they purchase, and they are of lesser

1 value. You should look at this.

2 There is a second point which Mr. Polovoy made,
3 and that is that the whole area of the legislation which
4 we do have in Maryland could be expanded. Those of us
5 associated with colleges and universities know the
6 significance of acts which would deal with hallucinatory
7 drugs, and they would be able to place their finger on
8 this matter. Then this matter of lending: I would like
9 to relate one story to you.

10 At our own college we have some students who are
11 spending more time at work than they should, and they are
12 doing this because they need to pay out debts of the family.
13 You are all familiar with the integrated loan agencies,
14 which take a whole host of loans and integrate them into one;
15 but when they do, then they commit the wife of the family
16 and the young men and women and children of the family to
17 take on the new job responsibilities. Students who are
18 already carrying out too great a workload endanger their
19 scholastic work.

20 I have talked with them personally.

21 Mr. Polovoy said the whole area of gimmicks in

1 super markets, bingo, Tigerama, in terms of gasoline
2 stations -- six States, if you have ever watched T.V.,
3 have statements which say they cannot permit this sort of
4 thing, and if we in Maryland could move in this area, pri-
5 ces would be lowered instead of the gimmicks which are held
6 before us.

7 Now, finally this matter of voluntary action:
8 The Better Business Bureau in Baltimore handles 75,000
9 cases, and they handle them in the main very well. But
10 they can only deal with those ethical businesses that are
11 part of the Better Business Bureau. They cannot say to
12 those unscrupulous business groups that are not members,
13 you must follow the law.

14 Cav Darrell, a wonderful person, said
15 this week that a year ago he would have voted against
16 consumer protection, but now he realizes that the best
17 thing to have for the ethical merchandiser is to have laws
18 which protect them against the unscrupulous. And the
19 better businessmen -- we know 95 percent of the merchants
20 are in the area of the ethical, but they need along with
21 it this Constitutional provision which would say once and

1 for all that along with voluntary action you need this
2 other action.

3 Just one word to my very good friend, Dr. Wins-
4 low, who I just think is tops, and that is: It may well
5 be that this holds out a promise that cannot be fulfilled,
6 but I say to you as one who studied school laws in
7 Maryland and developed a lot of them that in 1867 there were
8 some who rose in this very hall, this building, and said
9 that you are holding out the hopes for public education
10 for large masses of people, the kind of hopes that will
11 never materialize; and those of you who know how hard
12 we have worked in education to make this dream become a
13 reality know that it would never have been possible, had not
14 the hopes been held out.

15 We have nothing to lose by this, and a whole
16 lot to gain. We give a good deal of endorsement to what
17 the General Assembly has done, and this will give
18 them a little push which they themselves want.

19 Thank you.

20 THE CHAIRMAN: Does any other delegate desire
21 to speak?

1 Delegate Weidemeyer.

2 DELEGATE WEIDEMER: Mr. President, under the
3 rule, a delegate for or against has always been allowed
4 to speak, but I am in the unknown category of the delegate
5 who wishes to pass, and wants to explain his vote.

6 I realize, Mr. President, that the legislature
7 is going into this field, that the legislature has all
8 inherent powers to pass such legislation and protect the
9 consumer, and I am all for that. But on that basis,
10 Mr. President, I would be opposed to putting this into the
11 Constitution.

12 On the other hand, Mr. President, in the last
13 few months you and I have both been forced to consume
14 an awful lot of natural gas, and possibly I feel now that
15 I should be constitutionally protected.

16 I am hoping, Mr. President, that we soon get
17 a vote, and when I pass, the rest of the delegates will tell
18 me how I should have voted.

19 THE CHAIRMAN: Are you ready for the question?

20 Delegate Finch, do you desire to be heard?

21 DELEGATE FINCH: I would like to speak on behalf.

1 THE CHAIRMAN: You may proceed.

2 DELEGATE FINCH: This recommendation basically
3 states that the protection and education of the people of
4 the State is essential against unfair trade and financial
5 practices, and that these shall continue to be the concern
6 of the State.

7 In the past few decades, retail selling of con-
8 sumer goods has undergone a type of revolution. Whereas,
9 formerly, one would go to the neighborhood store and buy
10 products directly from the clerk; today, one goes to the
11 supermarket and shops alone along double aisles crowded
12 with, oftentimes, up to 8,000 items. The knowledgeable
13 clerk is no longer there to explain and advocate the better
14 buys, and the shopper must rely, more than ever before, on
15 the label or package of the products.

16 Deception in labelling and packaging makes the
17 task of the consumer-shopper very arduous today. What the
18 consumer needs and wants is a reasonable degree of compara-
19 bility between competing goods so that he can make informed
20 choices between various products.

21 This recommendation seeks to insure that the

1 legislature will provide consumers the opportunity to
2 fairly and reasonably compare the various products, that the
3 legislature will take concrete steps to actively implement
4 the principle that the consumer is entitled to a full,
5 reasonable and clear picture of the product he is purchasing
6 as such picture is presented by the label or package of the
7 product itself.

8 Now, it is becoming increasingly evident that
9 sharp business practices, prevalent today in many forms,
10 will not abate in an atmosphere of virtually unrestrained,
11 ungoverned package advertising. Rather, the problem is
12 increasingly poignant as the practiced ingenuity of retail
13 packagers creates more elaborate, more catchy, more decep-
14 tive devices to lure the public to its product.

15 President Johnson, in renewing his request for
16 legislative action in the packaging and labelling field,
17 remarked, in 1966, that "It is not enough to hope that such
18 practices will disappear by themselves. The Government
19 must do its share to insure the shopper against deception,
20 to remedy confusion and to eliminate questionable practices."

21 A new Constitution for the State of Maryland

1 affords an excellent opportunity to insure that the State
2 government will act to protect the consumer, and this very
3 proposal might well represent a much needed "Consumers'
4 Bill of Rights."

5 Just what sharp practices must be combated on
6 behalf of the consumer? Initially, it should be observed
7 that packages in the more than 30,000 supermarkets through-
8 out the country, and, more particularly the hundreds of
9 supermarkets in Maryland do not, on the whole, reflect
10 simple, direct, accurate and visible information as to the
11 nature and quantity of the packages contents, including the
12 various ingredients therein. For instance, one finds such
13 vital information as weight and contents tucked away every-
14 where on the package except one agreed upon place where a
15 person might find it automatically. Or one finds the use
16 of size designations that have no actual relation to quanti-
17 ty in order to gain competitive advantage.

18 Thus, one manufacturer's king size is another
19 manufacturer's large size; a simple quart is labeled
20 "extra large quart"; or a pint is labeled "giant half-
21 quart." In toothpaste packages, the smallest size is

1 often marked "large."

2 Another problem which plagues the consumer is
3 the pervasive presence, on supermarket shelves, of decep-
4 tively shaped boxes, misleading pictures, and promotional
5 gimmicks that promise nonexistent savings. The former
6 part of the problem, deceptively shaped packages, involves
7 the use of various containers of shapes, sizes, and dimen-
8 sional proportions which give an exaggerated impression of
9 the quantity within. This is common in potato chip packag-
10 ing for example.

11 Further, plastic jars of hair pomade often look
12 as if they would hold two ounces but, because of hollow
13 sides and a hollow bottom, actually hold only one ounce.

14 Another phase of this problem is the practice
15 of letting air occupy a significant part of the container.
16 This prevalent practice is known as "slack fill" or "slack".
17 Nonfunctional air space creates the appearance of more
18 bulk than actually exists, and the consumer pays product
19 prices for nothing but air. The detergent industry plys
20 this practice.

21 A final phase of this particular problem is

1 the "cents off" promotion. Cents off labels do not pro-
2 vide the meaningful price information they propose to
3 and, in fact, are not price guides at all. Rather, they
4 serve merely as promotional devices designed to make the
5 buyer believe he is being offered a bargain, when, actually,
6 bargains cannot be determined without price comparisons.
7 One product might trumpet "6 cents off the regular price."
8 What is the "regular price" for such a product is not
9 clear or really determinable at all.

10 Another problem which stymies the consumer-
11 shopper is the lack of uniform, reasonable, appropriate
12 weight standards to facilitate comparative shopping: Which
13 is the better buy - two 6 3/4 ounce cans of tuna fish for
14 63 cents, or one 9 1/4 can for 43 cents?

15 There are 71 quantities of potato chips under
16 three and a half pounds. How would one make a price
17 comparison without a slide rule?

18 THE CHAIRMAN: Delegate Finch, the Chair does
19 not like to interrupt you. We are not under debate schedule,
20 and under the rules you have, if you choose to take it,
21 15 minutes to speak.

1 The Chair suggests to you, however, that you
2 have already lost the attention of the Committee of the
3 Whole, and you would gain your point much better by bringing
4 your remarks to a speedy conclusion.

5 DELEGATE FINCH: The above recommendation
6 concerned consumer goods but it is not confined to goods
7 - it relates to disclosure of factors surrounding credit
8 transactions and the purchase of services. These areas
9 are equally vital, even though they are not as prone to
10 advertising mediums as are consumer goods. Requiring dis-
11 closure in these areas to protect the purchaser does not
12 violate any methods of competition as might be claimed
13 in the highly competitive consumer market; it merely
14 makes honesty a reality and gives the average man a decent
15 opportunity to secure a fair deal when he seeks a loan or
16 purchases a service.

17 The above, then, are but some of the problems
18 facing the consumer-shopper. This recommendation merely
19 endorses the idea that the State will act to protect the
20 consumer and require full and meaningful disclosure to
21 accomplish this end. Such an endorsement, written into

1 the new Constitution, will serve the public interest by,
2 in effect, endorsing the enforcement of honesty and
3 endorsing the protection of the consumer with respect to the
4 goods he buys.

5 Thank you.

6 THE CHAIRMAN: Are you ready for the question?

7 The question arises on the approval of Committee
8 recommendation No. GP-4.. A vote Aye is a vote in favor
9 of the committee recommendation; a vote No, a vote against.
10 Please ring the quorum bell. A vote Aye, a vote in favor
11 of the approval of the committee recommendation; a vote
12 No, a vote against.

13 Cast your vote.

14 Has every delegate voted? Does any delegate
15 desire to change his vote?

16 The Clerk will record the vote.

17 There being 69 votes in the affirmative and 60
18 in the negative, the recommendation is approved.

19 The next item on the calendar is Committee Re-
20 port EB-1. This is not Committee Recommendation EB-1, but
21 Committee Report EB-1.

1 We will proceed under Debate Schedule No. 5.

2 The Chair calls on Delegate Morgan to present
3 the Committee Report.

4 DELEGATE MORGAN: Mr. Chairman.

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: Ladies and Gentlemen of the
7 Committee, the Committee on the Executive Branch has the
8 honor to submit its recommendation as to what should, and
9 its recommendation as to what should not be contained in the
10 Executive Branch Article of the new Constitution.

11 Our recommendations are divided into two parts.
12 The first is designated Committee Report EB-1. This is
13 printed on white sheets of paper and contains our committee's
14 recommendations as to what should not be included in the
15 Constitution.

16 The second part is designated as Committee
17 Recommendation No. EB-1. This part is printed on blue
18 sheets of paper that are before you on your desks, and con-
19 tains the committee's recommendations as to what should be
20 in the new Constitution.

21 At the outset I should like to express to the

1 Executive Branch Committee members for the records of
2 this Convention my deep appreciation for their cooperation
3 in all our deliberations. We had issues as to which there
4 were sharp differences of opinion, and yet every member of
5 the committee conducted himself with a genuine respect
6 for the opinions of other members who did not agree with
7 him. It was and is, in my opinion, a great committee,
8 and I am very proud to have had the good fortune to be
9 its chairman.

10 We will dispose of recommendations on the white
11 sheets of paper first. That is Committee Report No. EB-1.
12 Then we will proceed to the recommendations on the blue
13 sheets.

14 This past weekend the President of the Conven-
15 tion strongly urged a compromise upon both the majority
16 and the minority of the committee, with a view to resolving
17 their differences with respect to Committee Report No.
18 EB-1. I regret to say, however, that early this afternoon
19 these efforts to compromise the issues came to naught.

20 The Committee Report No. EB-1, the committee
21 recommends that one agency and a number of offices

1 of the State government not have a Constitutional status.
2 I want to emphasize that the committee does not recommend
3 the abolition of the one agency or any of these offices,
4 only that they do not have a Constitutional status.

5 The agency covered by our recommendations is
6 the Board of Public Works, and the offices are the Office
7 of Comptroller, the Office of Treasurer, and the
8 following sundry offices, at least three of which ceased to
9 exist long ago: Secretary of State, Coroners, Elisors,
10 Notaries Public, Surveyors, and the State Librarian.

11 The issue of whether the new Constitution should
12 provide for a Board of Public Works, whether it should
13 provide for an elected Comptroller, whether it should pro-
14 vide for an elected Attorney General, whether it should
15 provide for a Treasurer appointed by the General Assembly,
16 all of these issues were extremely controversial in our
17 committee, and the vote on each was 11 to 9.

18 There was no controversy as to the Secretary of
19 State, Coroners, Elisors, Notaries Public, Surveyors, or the
20 State Librarian.

21 Now let me give you the reasons the committee

1 made the recommendations it did on the Board of Public
2 Works, on the Comptroller, on the Treasurer, and on the
3 Attorney General.

4 From the beginning, the Maryland Constitution
5 has represented to the people of Maryland that the executive
6 power of the State was vested in the Governor. Moreover,
7 the Constitution has represented that the Governor is
8 the one who has the responsibility to see to it that the
9 laws of the State are faithfully executed.

10 These representations in the Constitution,
11 however, just aren't so. The Constitution of 1867 vests
12 important executive functions in the Board of Public Works.
13 Now, while most of those Constitutional functions have
14 become archaic and non-existent as a result of the march
15 of history, the 1867 Constitution also vests important execu-
16 tive functions in the Comptroller and vests executive func-
17 tions in the Treasurer.

18 Under the existing Constitution the Governor
19 cannot, in the case of many laws, take care that such laws
20 are faithfully executed, except with the approval of another
21 member of the Board of Public Works -- and both of the other

1 members of that Board have no responsibility to the Governor.

2 This is clearly recognized by the Fiscal Manage-
3 ment Subcommittee of the Curlett Commission. The Honorable
4 Joseph Sherbow, Chairman for that Subcommittee, on page 78
5 of the Commission's report said -- and I quote:

6 "It is entirely possible for the two other mem-
7 bers of the Board to override the policies and proposals of
8 the Governor and, in effect, to play a role which is, in
9 theory, assumed to be that of the chief executive.

10 "While Maryland has been fortunate that the
11 decision making rules of the Board have not disrupted
12 or seriously impaired State executive activity and develop-
13 ment, the impact of this rule upon future executive leader-
14 ship and responsibility should be carefully evaluated."

15 A majority of the Committee felt that this
16 dispersion, or this dilution of executive authority,
17 interferes with the governor's ability to implement and
18 carry out his programs; that when the people elect a particu-
19 lar individual as Governor they have a right to expect that
20 the man they vote for won't have hobbles on his feet in
21 initiating and carrying into effect the programs which he

1 promises in his election campaign.

2 The Committee concurred in the statement con-
3 tained in a book published in 1960 by the National Muni-
4 cipal League: "The greatest single impediment to executive
5 unity lies in the constitutional designation of top
6 officials who obtain office by popular election or by legis-
7 lative action."

8 It also concurred in the statement that William
9 G. Colman, executive director of the Advisory Commission
10 on Intergovernmental Relations, made before the Committee.
11 In that statement Mr. Colman said: "The Commission be-
12 lieves that the State Constitution should provide for a
13 'short ballot.'"

14 I am still quoting.

15 "In other words, executive authority should be
16 pinpointed in the governor, and should not be scattered
17 among many separately elected administrative officials
18 and boards and commissions. Just as fewer and fewer cities
19 find the 'commission form' of city government with its
20 political fragmentation tolerable, States are finding a
21 similar need to focus executive power in their Chief

1 Executive. Not only does the 'long ballot' make it extreme-
2 ly difficult for the governor to develop, propose, and carry
3 out coordinated policies and programs; it also adds to the
4 burden of the voter in the voting booth and contributes
5 to the low visibility of State government which we all
6 deplore."

7 I am still quoting.

8 "From the point of view of intergovernmental
9 relations, moreover, the scattering of executive authority
10 among many separate elected officials places the governor
11 at a tremendous disadvantage in trying to keep informed
12 of and to coordinate the flow of Federal grants-in-aid into
13 the States.

14 "Here again, if we insist on the dilution of
15 gubernatorial power among a group of independently elected
16 officials, we place the Governor at a tremendous disadvantage
17 in dealing with the President of the United States on
18 questions of Federal-State relations. We do not insist
19 that the President share his executive powers, so why do
20 we insist on doing the same thing at the State level?
21 So I say to you, if you want weak State government, a good

1 way to achieve it is through the long ballot."

2 This advisory Commission isn't made up of
3 theoreticians. It consists of top-flight people who have
4 years of practical experience in government. Here are some
5 of the members:

6 Frank Bane, Chairman of the Commission. Many
7 of you will remember him. He was the executive director
8 of the Governors' Conference for years.

9 Members of the Commission included:
10 John Anderson, Governor of Kansas; Richard Batterton,
11 Mayor of Denver, Colorado; Neal S. Blaisdell, Mayor of
12 Honolulu, Hawaii; Howard R. Bowen, Citizen Member, Grinnel
13 Iowa; Anthony J. Celebrezze, Secretary of Health, Education,
14 and Welfare, who I believe was the former Mayor of Cleve-
15 land; Edward Connor, Supervisor, Wayne County; C. Doug-
16 las Dillon, Secretary of the Treasury; Michael V. DiSalle,
17 former Governor of Ohio; Clair Donnenwirth, Supervisor,
18 Plumas County, California; Robert B. Duncan, Speaker of the
19 House of Representatives, Salem, Oregon; Florence P. Dwyer,
20 member of the House of Representatives; Sam J. Ervin, Jr.,
21 from Tennessee, Member of the Senate; L. H. Fountain,

1 North Carolina, Member of the House of Representatives;
2 Ernest F. Hollings, Governor of South Carolina; Eugene J.
3 Keogh, Member of the House of Representatives from New
4 York; Karl E. Mundt, Member of the Senate from South
5 Dakota; Edmund S. Muskie, Member of the Senate from Maine;
6 Arthur Naftalin, Mayor of Minneapolis.

7 These are just some of the people who were on
8 this Advisory Commission on Intergovernmental Relations
9 that endorsed that statement which I just read.

10 These, then, are the principles that have governed
11 the majority of the committee in making its recommendations
12 set out in its report No. EB-1. The committee's recommenda-
13 tion as to what not to include in the new Constitution
14 had widespread support among witnesses who appeared before
15 our committee, or who submitted statements to the committee
16 at the committee's request.

17 Mr. Chairman, I now come to the committee's
18 recommendation with respect to the Board of Public Works.

19 I want to emphasize at the outset that we are
20 not recommending that the Board of Public Works be abolished.
21 We are simply recommending that it not be a constitutional

1 agency. Indeed, we recognize that many of the functions
2 of the Board are of vital importance to the State, but under
3 the committee's recommendation the decision as to the
4 composition of the Board of Public Works, as to its
5 continuing existence, would be left to the General Assembly
6 - where the decision ought to be.

7 For all practical purposes, all of the functions
8 of the Board of Public Works are now statutory. Its ori-
9 ginal Constitutional functions, the reason for its originally
10 coming into being, have vanished, for all practical purposes,
11 with the passage of time.

12 The General Assembly at its next session could
13 create a Board of Fiscal Management, provide for a composi=
14 tion of such Board entirely different from that of the Board
15 of Public Works, and transfer all of the existing powers
16 of the Board of Public Works to the new Board.

17 Indeed, under the reorganization authority the
18 committee proposes to give to the Governor in section 4.19 of
19 Executive Article the Governor, subject to the approval of
20 the General Assembly, could transfer all of the functions
21 of the Board of Public Works to a new board.

1 So the issue of whether the Board of Public Works
2 should be a constitutional agency or not is from the
3 standpoint of State policy, in our opinion, insignificant.
4 We really can't understand what the controversy is over
5 this item. The functions of the Board are now almost
6 completely under legislative control. Those functions can
7 be changed, transferred to another agency, or indeed,
8 abolished. The Committee was of the opinion that the
9 composition of the Board and its continued existence should
10 be under the control of the General Assembly.

11 The Board of Public Works is created by Article
12 XII of the present Constitution and is composed of the
13 Governor, the Comptroller, and the Treasurer. Under the
14 present Constitution the Comptroller is elected by the
15 people, and the Treasurer is appointed by the General
16 Assembly. Thus, neither of these two officials is respons-
17 ible to the Governor or in any manner under his control.

18 The Board of Public Works has, through the
19 process of statutory accretion, acquired substantial responsi-
20 bilities.

21 It has been assigned power by law to fix

1 interest rates on and to sell State bonds, determine the
2 conditions thereof in advertising the sale of bonds, and
3 approves all contractors for expenditures from the proceeds
4 of any loans authorized by the General Assembly.

5 Similarly, it supervises expenditure of all sums
6 appropriated for the acquisition of land, buildings, equip-
7 ment, new construction, and other capital expenditures,
8 except those in connection with State roads and bridges.
9 It has broad authority over all State property or rights,
10 having the power of transfer and disposal of State real or
11 personal property.

12 The board has the power to borrow on the credit
13 of the State, issue tax anticipation notes, within legally
14 specified limits.

15 The Board supervises the administration of the
16 General Emergency Fund.

17 The Board establishes the State Property Tax
18 rate.

19 The Committee believes that the vesting of these
20 powers in a three-man board not responsible to the Governor,
21 the majority of which is not even appointed by the Governor,

1 is an unwarranted dilution of the governor's executive
2 authority and responsibility. It has been argued before
3 the committee that over the last 20 years the Board has
4 seldom had a vote, and therefore, the Board has not
5 interfered with the governor's decision making prerogative.
6 Maryland has indeed been fortunate in having had responsible
7 public officials who have resisted the temptation to use the
8 Board as an arena of internecine warfare, but the committee
9 believes it imperative to assure that all decisions of the
10 Board are in keeping with the Governor's views and policies
11 and not the result of compromise with other officials who
12 have no responsibility to the Governor.

13 The removal of the Board of Public Works from
14 the Constitution will not disturb the power of the General
15 Assembly or of the Governor through his reorganization
16 authority to allocate the Board's present powers, functions,
17 and duties. It should be noted that the president of the
18 Board is called upon to give approval to literally thousands
19 of small, routine transactions.

20 For example, the Board approves such matters
21 as travel expenses, write-off of equipment.

1 John Leutkemeyer, the State Treasurer, has
2 indicated these transactions could better be handled by
3 certification by the proper bureau head and approval by
4 the State Auditor.

5 Comptroller Goldstein left with the Committee
6 the minutes of the Board of Public Works for five months,
7 and I believe those minutes add up to, in toto, some 270,
8 about 270 pages, which is better than 50 a month.

9 Furthermore, section 4.18 of the Executive
10 Article proposed by the Committee in Committee Recommendation
11 EB-1 will remove the need for many of the Board's activi-
12 ties.

13 Over the years the Board has become responsible
14 for the administration and supervision of more than 30
15 activities not otherwise allocated to agencies in the
16 Executive Branch, according to the Curlett Commission Report.

17 Since Section 4.18 of the proposed Executive
18 Article mandates that these activities be allocated within
19 principal departments of the Executive Branch, a department
20 head will be available to act as administrator and super-
21 visor.

1 Although the committee feels that many of the
2 Board of Public Works' functions should be exercised at a
3 lower administrative level, it fully recognizes that many
4 of the Board's decisions are of vital importance to the
5 State and should be made in the open at public meetings
6 where minutes are kept.

7 The committee wishes to emphasize the committee
8 recommendations regarding the Public Works, the General
9 Assembly will still have the authority to provide that each
10 decision must be made in public, the minutes must be kept
11 and must be made only with the approval of the Board of
12 Public Works or some other board of the General Assembly
13 that the General Assembly establishes.

14 The committee acknowledges that under the
15 proposed Executive Article the Committee has eliminated
16 the existing Constitutional checks within the Executive
17 Branch. But it has left undisturbed -- and this
18 Convention is indeed strengthening -- the checks between
19 the executive, legislative, and judicial branches. By far
20 the best check within any branch is the requirement that
21 can be imposed by the General Assembly that all its decisions

1 be openly worked out in public.

2 In the area of fiscal management the General
3 Assembly will, through the post-audit authority the Conven-
4 tion specifically provided for, be able to provide an
5 extremely effective check. Moreover, the General Assembly
6 could assign by law to the Board of Public Works or some
7 other Board major decisions relating to budget execution,
8 and the creation of State debt. It would require that
9 this decision be made at public meetings where hearings are
10 held and minutes are kept.

11 Under the committee's recommendation, any such
12 board would be directly responsible to the Governor.

13 For the reasons stated, the Committee on the
14 Executive Branch respectfully submits that the Board of
15 Public Works should not be constitutionally created.

16 THE CHAIRMAN: Are there any questions of
17 the committee chairman for purposes of clarification?

18 (There was no response.)

19 THE CHAIRMAN: Apparently there are no questions.

20 The Chair calls on Delegate Dorsey.

21 DELEGATE DORSEY: Mr. President.

1 THE CHAIRMAN: Delegate Dorsey.

2 DELEGATE DORSEY: Ladies and Gentlemen of the
3 Convention:

4 At the outset let me express the same sentiment
5 that my good friend Gerald Morgan has expressed for the
6 Committee on the Executive Branch. I have never served
7 with a group -- while I can't say we weren't congenial --
8 but that were a finer group than the 20 members who composed
9 this committee. And let me say that I have never known a
10 finer chairman than Delegate Gerald Morgan. He is a real
11 soldier under fire. During the heat of debate he never
12 changed his mind. While I always voted with the
13 minority -- I never had the pleasure of voting with the
14 majority -- I have the highest admiration for the men and
15 women who composed this committee.

16 Now, speaking for the minority, we offer a
17 minority report that the Board of Public Works be retained
18 in the Constitution of Maryland. For 100 years this has
19 been in the Constitution of Maryland, and for 100 years it
20 has been a check on the executive of this State.

21 We propose that the Board of Public Works be

1 retained as it is now composed, with an elected Comptroller,
2 and a Treasurer elected by the General Assembly.

3 We are perfectly willing that this be amended so
4 as to give the governor complete control by including in
5 the Board of Public Works a budget director appointed
6 by the Governor, and a Superintendent of Public Works
7 appointed by the Governor, which would always give the
8 Governor a majority on the Board. But we feel that for
9 the protection of the people of Maryland this Board
10 should be retained in the Constitution. A Board of Public
11 Works performs many duties. It has always been a check
12 on the Executive.

13 There is no good in locking the barn door after
14 the horse is stolen. What this does is keep an executive
15 honest, if he is inclined not to be so; and during the 100
16 years that we have lived under the present Constitution we
17 have never had any scandal in the Executive Department of
18 this State.

19 I feel that this is a critical hour in the
20 history of Maryland. This whole Convention, the leadership
21 of it, seems to feel that the electorate of Maryland

1 should not be guaranteed any rights. My good friend Gerald
2 Morgan has quoted from the National Municipal League
3 that a short ballot gives the best government. I do not
4 feel that Maryland has a long ballot. The Attorney General,
5 the Comptroller, and the Governor is indeed a short ballot
6 when compared with other States.

7 If there had been any scandal in the operation of
8 the Board of Public Works or the Comptroller's
9 office, or the Treasurer's Office, there might be good reason
10 to abolish these offices from the Constitution and give
11 their appointment to the Governor, but in the 100 years
12 that they have operated there has never been a breath of
13 scandal.

14 What this is doing is concentrating in the
15 hands of the executive greater power than now enjoyed by
16 any State executive on the American continent.

17 What we are asked to do today is cast aside
18 the wisdom and the experience of 100 years for a new
19 concept of government about which we do not know, and
20 lest your Convention grow confused, let me refer to the
21 Scripture: "Sayeth the Lord, stand ye in the ways and seek

1 the old path" -- which is a good way -- "and walk therein,
2 and ye shall find peace for your souls."

3 What is being proposed is to discard the old
4 path, which has given Maryland 100 years of good democratic
5 government, for a path which may be glittering, but which at
6 the end may bring the total destruction of democratic
7 government in this State, and bring corruption and despair
8 to the people of Maryland.

9 We are told by those who prepare the draft that
10 100 years ago when the Maryland Constitution was drafted
11 we were less than 100 years away from the Crown of England,
12 and the people wanted to reserve the right of franchise.

13 We may be 200 years today away from the Crown
14 of England, but all over the world today the lights of
15 democratic government are disappearing, and what the people
16 in America are afraid of is totalitarian government such as
17 existed in Nazi Germany or Soviet Russia.

18 The Constitutions of the various States in
19 this nation are the greatest bulkwark and strength of demo-
20 cratic government.

21 I ask this Convention to go slow in abolishing

1 from the Constitution of this State offices which for over
2 a century have proved beneficial to the people.

3 In the minorityreport we pointed out that
4 Governor Agnew in his address to the Constitutional Con-
5 vention stated, "In my opinion the Board of Public Works
6 should be continued, but reconstituted. The Board provides
7 a forum for public scrutiny and presents an opportunity for
8 the expression of legislative views on significant deci-
9 sions. I believe the State Treasurer, an adjunct of the
10 legislative arm, should continue as a representative of
11 the General Assembly."

12 At the present time the Board of Public Works
13 has many important responsibilities, most of them statutory,
14 including the supervision of the creation of State debts,
15 the terms and conditions thereof, and the advertising and
16 sale of bonds. And let me call to the Convention's atten-
17 tion that at the present time in the money markets of the
18 world bonds of Maryland have a triple A rating and produce
19 the highest return.

20 In addition, the Board of Public Works has
21 the approval of all contracts for expenditures from the

1 proceeds of any loan authorized by the General Assembly.
2 if
3 In other words, /the State was to build a new office
4 building, it would supervise the construction from the
5 loan credited by the State. Supervision of expenditure of
6 all sums appropriated for the acquisition of land, b uilding
7 equipment; new construction; and other capital expenditures
8 except those in connection with State roads and bridges;
9 authority over all State property or rights, having to
10 finance and transfer and dispose of State personal real
11 property; authority to borrow upon the credit of the State,
12 and to issue tax anticipation notes within legally specified
13 limits; supervision of all lump sum appropriations not
14 detailed by law; supervision of the administration of the
15 General Emergency Fund and the establishment of State
16 Property Tax rates, are responsibilities of the Board of
17 Public Works.

17 I cannot quote to you from any political scien-
18 tists from Columbia University, but I would quote to you
19 from one of the greatest students of good democratic
20 government in this nation, and that is the Honorable J.
21 Millard Tawes, the Honorary President of this Convention,

1 and he says that in his opinion the Board of Public Works
2 should be retained in the Constitution for the protection
3 of the people of this State.

4 At the present time the Board is composed of
5 only three members: The Governor, the State Comptroller,
6 and the State Treasurer. It meets formally each month and
7 passes on three separate agenda, one submitted by its secre-
8 tary, one by the Budget Director, and one by the
9 Director of the Department of Public Improvements.

10 We believe that the Board exercises an immensely
11 important function in State Government, and that it should
12 continue to be provided for in that Constitution.

13 At the same time we recommend that the size of
14 the Board be increased to five, added to with appointees
15 of the Governor, possibly the Budget Director and the
16 Director of the Department of Public Improvements.

17 We also feel that the General Assembly should
18 specify the duties of this Board so that it is concerned
19 with matters of only the most important public consequence,
20 permitting the Board to delegate minutia to appropriate
21 departments.

1 The majority's only important argument for the
2 abolition of this board is that since the Comptroller and
3 Treasurer are not responsible to the governor, he cannot
4 control the action of the Board, and that consequently the
5 Board may be used as an arena for internecine warfare.

6 This contention is in no way supported by fact.
7 Indeed, the Board's history over the last 45 years has been
8 one of harmony and cooperation, and no evidence has been
9 presented to our committee that the Comptroller and the
10 Treasurer have ever been contrary to the gubernatorial
11 policy.

12 Their presence on the Board has, however,
13 provided our State with a vital system of checks and
14 balances in the area of State finance on a day-to-day
15 basis. And with the continuity of government within the
16 executive branch, moreover, as truly independent elected
17 officials, their membership on this board insures that the
18 public may be aware of all the facts inherent in any import-
19 ant executive decision; and in these sensitive areas we
20 believe that the continued existence of the Board of Public
21 Works with these two independent elected officials, one

1 representing the public directly and the other representing
2 the legislature, is absolutely necessary to the preserva-
3 tion of the checks and balances and for the fullest protec-
4 tion of the public.

5 Were these officials not to sit on the board,
6 checks and balances would be necessarily withdrawn, and
7 public meetings could and might well be nothing more than
8 meetings to announce decisions already made behind
9 closed doors.

10 In effect, this would be merely a history lesson,
11 the accuracy of which might or might not be determined at a
12 much later date by post-audit.

13 Moreover, the majority admits to the recommending
14 of eliminating of existing Constitutional checks within
15 the executive branch, even though the Constitution provides
16 for such checks within the legislative and judicial branches.

17 They believe that legislative post-audit will be
18 a sufficient replacement.

19 In our opinion, legislative post-audit, import-
20 ant though it is, does not in any way provide the same type
21 of check. Legislative post-audit operates after the fact, and
has no control over or access to the day-to-day operation of

sensitive State business.

1 We believe that the Governor should be in
2 position to exercise control over the actions of the
3 Board. Consequently, we recommend that he be given the
4 power to appoint two of the members. Such a provision
5 would permit the Governor to have a controlling vote on
6 the important issues while enabling the Comptroller and
7 Treasurer publicly to analyze and present objections to
8 any of the actions of the majority which they feel might
9 be against the best interests of the state.

10 Furthermore, their minority membership would
11 provide the Governor with advice and counsel born of long
12 experience in state government.

13 We feel that the office of Governor should be
14 strengthened and streamlined just as we support improve-
15 ments in the legislative and judicial branches. These
16 changes must be made, however, with prudence and care,
17 making Government more efficient while continuing im-
18 portant protections against unwise, unfair or precipi-
19 tous actions not in the best interests of our citizens.
20 The Board of Public Works has served our state well, and
21 it has a vitally important role to play in the challenging
times ahead.

1 The protections which it affords our citizens
2 must be guaranteed in a new Constitution as problems
3 become more complex, the cost of government continues to
4 spiral, and the pace of life grows more rapid. .

5 We, therefore, respectfully urge the Convention
6 to retain the Board of Public Works -- increasing its
7 membership to five and recommending to the General Assem-
8 bly that its duties be streamlined.

9 THE CHAIRMAN: Are there any questions of the
10 minority spokesman for purposes of clarification?

11 Delegate Raley.

12 DELEGATE RALEY: Mr. Chairman and Judge Dorsey,
13 the majority committee chairman said that the Board of
14 Public Works could be set up by the General Assembly, that
15 the article as submitted here would not prohibit it. I
16 have not, of course, had the opportunity of the study and
17 research that you all have on the committee, but it did
18 seem to me that under Section 4.18 it is clearly pro-
19 hibited, it clearly prohibits the Board of -- the Assembly
20 from setting up the Public Works because it says "All
21 powers and duties, et cetera", shall be put into twenty

1 agencies, 20 principal departments, and if I understand it,
2 it means 20 principal departments and certainly the Board
3 of Public Works would not be a principal department, and
4 therefore, this section prohibits, it seems to me now,
5 I would like to comment on it now -- it seems to me it
6 would prohibit the General Assembly from setting up a
7 Board of Public Works.

8 THE CHAIRMAN: Delegate Dorsey.

9 DELEGATE DORSEY: I am inclined to agree
10 with you that it would. I would rather you take it up
11 with some members after the Convention. However, I say
12 to you, and I say to this Convention, that the Board of
13 Public Works has always reacted to the benefit of the peo-
14 ple of this state and should be retained in the Consti-
15 tution and discretion should not be given to the legis-
16 lature.

17 THE CHAIRMAN: Any further questions of the
18 minority spokesman, Delegate Henderson?

19 DELEGATE HENDERSON: Judge Dorsey, is it not
20 true that all of the powers enjoyed by the Board of
21 Public Works at the present time are legislative rather

1 than Constitutional in origin?

2 THE CHAIRMAN: Delegate Dorsey.

3 DELEGATE DORSEY: That is true and so far
4 as the minority is concerned, we are perfectly willing
5 that the legislature prescribe their duties but the com-
6 position of the Board of Public Works is described in
7 the Constitution in Maryland as new section and the
8 legislature is given leeway to prescribe its duty; that
9 is all we ask, that it be retained in the Constitution.

10 THE CHAIRMAN: Delegate Henderson.

11 DELEGATE HENDERSON: Why is it necessary to re-
12 tain it in the Constitution if all of the powers it
13 now exercises are legislative in origin as you have just
14 said?

15 THE CHAIRMAN: Delegate Dorsey.

16 DELEGATE DORSEY: Suppose the legislature
17 decides to abolish it. If it is not written in the
18 Constitution, what is to stop the legislature from
19 abolishing it?

20 THE CHAIRMAN: Delegate Henderson.

21 DELEGATE HENDERSON: Are you asking me the

1 question? I would say in answer to your question, if
2 all its powers are legislative the legislature could
3 abolish those powers and withdraw them tomorrow.

4 THE CHAIRMAN: Delegate Dorsey.

5 DELEGATE DORSEY: As long as the Board of
6 Public Works remains in the Constitution there will
7 never be a legislature in history that will have the
8 nerve to take away its duties. But take it out of the
9 Constitution, then the legislature might not hesitate
10 to do so. Does that answer your question?

11 THE CHAIRMAN: Are there any further questions?
12 If there are no further questions, we could proceed to
13 a consideration in accordance with the debate schedule.

14 Under the debate schedule Delegate Dorsey has
15 20 minutes of controlled time and Delegate Morgan 20
16 minutes of controlled time and there is 30 minutes of
17 uncontrolled but limited time.

18 The Chair recognizes Delegate Dorsey.

19 DELEGATE DORSEY: At this time I would like
20 to allot 3 minutes to Delegate Bushong.

21 THE CHAIRMAN: Delegate Bushong.

1 DELEGATE BUSHONG: I was home in a county of
2 a little over 100,000 people this weekend and I talked to
3 many of them about the proposition of the Board of Public
4 Works; the Attorney General, the Comptroller and the
5 rights of the Governor which are already regardless in the
6 State of Maryland regardless of what we do here.

7 It was almost unanimous, they do not under-
8 stand why this Constitution wants to take away from the
9 people of this state the right to elect these elective
10 officials. They can't understand because it has been
11 going on in Maryland for years and years and certainly
12 the Board has performed well.

13 Nowe, we came down here to re-write the Con-
14 stitution and most of it that I have voted for so far is
15 pretty good, but I can't understand why you want to take
16 these legislative offices away from people. Now, what
17 are they going to say? You fellows went down there and
18 you did -- you took this away from us and you took that
19 away from us and you took this away from us. Is that
20 democracy?

21 I know you can use all kinds of reasons why

1 you don't want them but those reasons are sometimes very
2 suspicious and I hold no brief for the individuals
3 involved in those offices, but I do say that the people of
4 Maryland have had good government and you can look at it.
5 Now, give it to somebody with individual power and let
6 him wreck it and then where will you be?

7 THE CHAIRMAN: You have one-half minute,
8 Delegate Bushong.

9 DELEGATE BUSHONG: It only takes one man to do
10 it if you give him enough power.

11 THE CHAIRMAN: Delegate Dorsey.

12 DELEGATE DORSEY: Mr. President, I will
13 extend the time two more minutes.

14 THE CHAIRMAN: Very well, Delegate Bushong has
15 two more minutes additionally.

16 DELEGATE BUSHONG: And I feel that in the
17 history of the Board of Public Works it has performed
18 well. If you increase the governor's representation by
19 two, certainly the ugly head of politics can't play the
20 game because he is going to have three out of two.

21 Now, explain to me if that is the case, why in

1 the world do you want to do away with the Board of
2 Public Works ? There is big money that is appropriated
3 for the legislature for expenditures later on in the year
4 and who has the oversee of that expenditure? The Board
5 of Public Works.

6 Now, ladies and gentlemen, go, bring out your
7 new Constitution, but I warn you here and there if you
8 keep taking powers away from people, the elected powers
9 away from the people, it will not pass.

10 THE CHAIRMAN: Delegate Morgan.

11 DELEGATE MORGAN: Mr. Chairman, I owe five
12 minutes to Delegate Sickles.

13 THE CHAIRMAN: Delegate Sickles.

14 DELEGATE SICKLES: Mr. Chairman, I listened
15 with great interest when you addressed this body on
16 September 12 and it seemed to me that you painted the
17 picture rather clearly as far as the State of Maryland
18 is concerned and really as far as many of the states in
19 this union are concerned.

20 I think were there were some disagreements
21 with the language that you used, but I don't think anybody

1 can really disagree with the point you were trying to
2 make. There are many in this country and I am one of them
3 who really feel that democracy is still at stake and I
4 think those who speak the loudest with respect to taking
5 away from the people their right to elect a particular
6 candidate or other candidate ought to think about what
7 they are doing, because I don't think they really under-
8 stand what they are doing for themselves.

9 The reason we are here is because the people
10 have decided that we ought to put the state back in
11 business and I can tell you that the people of the country
12 feel that this is true not just with respect to this state
13 but with respect to all of the states.

14 When I was in the Congress of the United States
15 we ended up concerning ourselves with many problems that
16 should be concerned by the states and local communities
17 but they were not. And we were in that position where the
18 buck had to stop and that is why we entered into these
19 programs.

20 Why do you think we have a poverty program on
21 the national level? It is because the states failed to

1 minister to these programs. Why do we have national
2 and water pollution, and poverty,
3 programs for air pollution/and all the problems that
4 affect the urban centers? It is because the states have
5 failed to act and the reason why they have failed to act
6 is because they are not properly constructed to act.

7 Now, I will go along with a legislature that
8 might fumble, that has some built-in you might call them,
9 checks or balances, so that everybody has a look before
10 a policy is adopted but once a policy is adopted, then
11 I think the people have a right to expect that it will be
12 carried out. And that is what this is all about. That
13 is why we are talking about the single executive, the
14 person to whom we can look to to carry out these pro-
15 grams, the person we can blame if they don't get carried
16 out.

17 Now, I am for visibility but not to the
18 extent of putting chains on the hands of the Chief
19 Executive. I am for the Board of Public Works properly
20 constituted, but let the legislature make that determination
21 and as the years pass, let it improve that kind of system
that will produce the most visibility, but let us not

1 lock it into the Constitution now. Let us not confuse
2 this particular issue with respect to the Board of Public
3 Works, with the other issue as to which candidates should
4 be elected and let us not open the necessity for
5 cementing this in the Constitution with respect to our
6 decision on the two other offices that are being included
7 in the revised Board of Public Works.

8 I would hope this committee would give us
9 the benefits they gave the other committees of this
10 Convention. We have strived hard and long to improve
11 the system.

12 THE CHAIRMAN: You have one minute, Delegate
13 Sickles.

14 DELEGATE SICKLES: So that the people of
15 Maryland will be protected.

16 Now, on the other side of the coin we are
17 told because they cannot elect particular officials they
18 are losing something. If this is true, why don't we add
19 more elective officials. Why don't we elect the state
20 Road Commissioner, why don't we have other elected of-
21 ficials and then why don't we shorten the terms so you have

1 to go more often back to the people. Of course this
2 is ridiculous. It makes no sense whatsoever. Let us have
3 visibility. The legislation will take care of that
4 but let us have a single executive so we will know where
5 the responsibility is.

6 THE CHAIRMAN: Delegate Dorsey.

7 DELEGATE DORSEY: Mr. President, I would like
8 to allot three minutes to Delegate Storm.

9 THE CHAIRMAN: Delegate Storm.

10 DELEGATE STORM: Mr. Chairman, my distinguished
11 brother from Prince Georges has just pointed out that
12 the poverty program, the air pollution program, and the
13 water pollution program are things which the states have
14 failed to act in.

15 I submit that the Board of Public Works has
16 nothing whatsoever to do with any of these particular
17 things. Please look on page three of the majority report
18 where the functions of the Board of Public Works are out-
19 lined.

20 The first one item they control is the
21 sale of state property. Now, I submit to you no

1 governor is going to campaign and say what particular
2 pieces of state property will be sold. This is not some-
3 thing that a man runs on for governor, but this is pro-
4 perly something that should be considered very carefully
5 by more than just the executive and unfettered executive.

6 This Convention decided to select a bicameral
7 legislature to guide against hasty, ill-considered
8 legislation. Shouldn't there be some disclosure, at
9 least, of what may well be hasty, ill-considered action
10 in the sale of state property or in approving the
11 creation of new jobs in the budget?

12 Now, our governor already has a tremendous
13 amount of power because he controls the budget. This
14 particular provision, Number 70, page 3, has been used
15 when emergency situations arose, when new jobs had to
16 be created. This really is a legislative function, not
17 an executive function, and so it was lodged by the
18 legislature in the Board of Public Works where there is
19 a combination of executive and legislative functions.

20 Look at some of the other things to fix
21 interest on rates, interest rates in the sale of state

1 bonds. No governor is going to be handicapped in his
2 program by this particular section, that is why we have
3 always had state treasurers who are expert in this
4 field.

5 I ask you please to keep the Board of Public
6 Works for visibility. It is important in my opinion,
7 because -- I do not mean to say that our future governors
8 will be dishonest, but they will receive advice from
9 some persons who may give them hasty and ill-considered
10 advice.

11 THE CHAIRMAN: You have one-quarter minute,
12 Delegate.

13 DELEGATE STORM: Thank you.

14 I plead with you -- even the majority report
15 they do not mean to do away with the Board of Public
16 Works. They want to keep it and the best way to keep
17 it is in the Constitution because as Senator Raley
18 says -- please consider this carefully before you take
19 such radical surgery on the state.

20 THE CHAIRMAN: Delegate Morgan.

21 DELEGATE MORGAN: Mr. Chairman, I yield five

1 minutes to Delegate Fornos.

2 DELEGATE FORNOS: Thank you.

3 THE CHAIRMAN: Delegate Fornos.

4 DELEGATE FORNOS: Thank you, Mr. Chairman.

5 Fellow delegates, much emotion surrounds the problem
6 with which we are confronted at the moment. Certainly I
7 hope we can isolate the motion and try to analyze the
8 issues which confront us in the decision of whether
9 Maryland moves in the 20th Century or whether it continues
10 to retain governmental arms which are best suited for the
11 19th century.

12 I submit to you that one of the reasons that
13 the legislature continually sends to the Board of
14 Public Works functions is the failure on the part of
15 the legislature to act and to create agencies of govern-
16 ment which will suit modern tools of management, a
17 reason why today we still have the Board of Public Works
18 deciding state property transactions, from fountain
19 pens to road construction programs, for disposal of lands
20 which was purchased and never used by the state. This
21 is because we havenot established a property disposal

1 agency within the state where under the providing and
2 proper rules and regulations, in full view of the public
3 land and other property of the state may be disposed of.

4 We have refused to establish modern tools
5 as far as bondedness of the state; sure we have a Triple-
6 A rating but we have a Board of Public Works which has
7 to decide whether we go ahead and purchase bonds of the
8 type at certain interest rates.

9 Shouldn't this be in the hands of a fiscal
10 adviser? We could go on, and time is limited, but really
11 the Board of Public Works has become a super-legislature,
12 an in-between arm where it can act quite contrary to the
13 will of the legislature to change appropriations and
14 there are examples upon examples as we go back over the
15 last hundred years where the legislature ruled one way
16 and then the Board of Public Works until such time as the
17 legislature reconvened, acted in a completely different
18 manner.

19 We heard much about the visibility that the
20 Board of Public Works gives to us. On the contrary, the
21 Board has held quite irregular meetings without a set

1 pattern and schedule. Many of the meetings have been
2 secretive in nature and some of them have been hastily
3 called and unannounced to the public as was the case in
4 1964 when the state property tax was raised from 15 to
5 17 cents per hundred and until 1959 the executive secretary
6 of the board has been under the control of the comptroller,
7 not under the Chief Executive and when we talk about his
8 ability, let us take a look at the record as has been
9 reflected over the years from 1966 to 1967; the minutes of
10 the Board of Public Works were provided to the public 7
11 months after the meeting of the Board. March 9, 1959
12 the minutes were available five **weeks** and 13 months
13 later.

14 The April 15 meeting, 1959, five months and
15 ten days later. The first meeting of the fiscal year
16 1963 was held in July and the minutes were published
17 December 24, and we can go back through the pages in
18 the annals of our state and find continually documented
19 evidence that indeed the Board of Public Works has been per-
20 **forming** a public service.

21 It has been a hindrance to Maryland moving

1 into the 20th Century.

2 THE CHAIRMAN: Delegate Dorsey.

3 DELEGATE DORSEY: Mr. Chairman, how much time
4 does the minority have remaining?

5 THE CHAIRMAN: I think you have 12 minutes or
6 so.

7 DELEGATE DORSEY: I would like to yield that.

8 THE CHAIRMAN: You have 13 minutes.

9 DELEGATE DORSEY: I would like to yield the
10 remaining 13 minutes to Delegate Sherbow.

11 THE CHAIRMAN: Delegate Sherbow.

12 DELEGATE SHERBOW: Mr. Chairman, will you
13 advise me when ten minutes have elapsed?

14 THE CHAIRMAN: I will.

15 DELEGATE SHERBOW: May I ask the Chair a
16 question?

17 THE CHAIRMAN: Proceed.

18 DELEGATE SHERBOW. The report calls for a
19 recommendation of the Board of Public Works not being
20 provided for in the Constitution. I assume that a
21 vote yes is a vote that it shall not be provided

1 and a vote no is that it shall be provided, is that
2 correct?

3 THE CHAIRMAN: That is correct. But before
4 you proceed, let me make an inquiry of Delegate Dorsey.

5 The Journal Clerk has handed me a memo which he
6 has received from you indicating that you desire to
7 offer an amendment to Committee Report EB-1 by striking
8 the word "not" on page 1, line 14.

9 If you desire to offer that amendment the
10 Chair will permit you to offer it now and continue the
11 debate or it will permit you to offer it at the end
12 of the controlled period.

13 DELEGATE DORSEY: I prefer to offer it at the
14 end of the controlled period.

15 THE CHAIRMAN: The Chair will rule that it
16 does not interfere with the debate schedule and
17 we will proceed with that understanding.

18 Delegate Sherbow.

19 DELEGATE SHERBOW: Mr. Chairman and members of
20 the Convention, I think it is very important that we
21 understand the issue that is now before us.

1 The Executive Branch Committee recommends
2 that the Board of Public Works not be provided for in the
3 Constitution. I oppose this recommendation. I urge
4 that this Convention should provide for the Board of
5 Public Works in the Constitution and whether you
6 agree later that the Board of Public Works should consist
7 of three or whether you agree that it should consist of
8 five is a matter for determination, but whichever it shall
9 be, it must be, I say to you, determined by the Consti-
10 tution.

11 Who says that the Board of Public Works should
12 not be in the Constitution? Not the present governor of
13 Maryland, Governor Agnew. He addressed this Assemblage
14 and he said "In my opinion the Board of Public
15 Works should be continued but reconstituted." You heard
16 his language, it was repeated here just a moment ago
17 by Delegate Dorsey.

18 Next, I called as a witness a man who served
19 eight years as Comptroller of the State, who served
20 on the Board of Public Works and who served as Governor
21 for eight years who is Honorary Chairman of this

1 Commission, Governor Tawes, and he too says that we
2 should keep the Board of Public Works in the Constitution.

3 Now, let us just see what this Executive
4 Branch Committee recommendation does. First, they
5 say that the Board of Public Works is an unwarranted
6 dilution of the governor's executive authority and
7 responsibility, but they go on to say this. The Com-
8 mittee, the Executive Branch Committee, acknowledges that
9 under the proposed Executive ARTicle, the Committee has
10 eliminated the existing Constitutional checks within the
11 Executive Branch.

12 And yet in its argument that there should not be
13 a Committee of three or a Board of three, this is what
14 the same committee says in its recommendation in the
15 Memorandum EB-1, page 22, lines 34 to 42, and they say
16 this, and I quote them literally: "The Committee recog-
17 nizes that there are few administrative absolutes and
18 that sometimes a plural decision-making body may be
19 desirable when there is need for continuity in policy
20 or to represent diverse viewpoints."

21 I am quoting the Executive Branch Committee.

1 Who else says that we should abolish the
2 Board of Public Works? The draft which you have from
3 the Constitutional Convention Commission does not say
4 abolish it. All that they say is don't put it in the
5 Constitution and they say it may be a good thing to have.
6 They do not say in their draft " Vest all the executive
7 responsibilities in the governor and eliminate the checks
8 completely."

9 You have this available. We don't have too
10 much time. I shan't read what is in the Blue Book.
11 Every change relating to the legislature that has come
12 before this commission has been debated long and over
13 many years, not one item recommended or brought before
14 this Convention by the Legislative Branch is so
15 totally new that you have to say "I only heard of it in
16 the last year or two." The same thing is true of the
17 Judicial Branch Committee.

18 Everything that they have said you have
19 heard debated, talked about, editorialized, written, and
20 discussed but until the Commission draft of less than a
21 year and a half ago, nobody suggested the abolition of

1 the Board of Public Works. It has not received the
2 scrutiny that all of the other changes which are suggested
3 here and have yet to come have received.

4 Let us go back to those who have studied our
5 government. We had a Commission under one of the
6 great living men dedicated to public service. I refer
7 to Judge Simon Sobeloff,, former Chief Judge of the
8 Court of Appeals of Maryland, City Solicitor of Baltimore,
9 Chief of the Judges of the Fourth Circuit Court of
10 Appeals, and on and on and on. He was Chairman of the

11 Sobeloff Commission created by the governor of
12 Maryland and this is what his report says, and I quote
13 from page 20 of this report published in 1952: "The
14 Commission recommended that the Board of Public Works
15 retain its authority over the major decisions involving
16 public works and property."

17 The Sobeloff Commission recommended
18 further that it retain its authority over the issuance
19 of funds, requests for bids, selecting sites for new
20 institutions and that its authority be broadened.

21 Now, I say to you in 1953 I think when Judge

1 Sobeloff became Chief Judge of the Court of Appeals
2 I believe Mr. Stockbridge became Chairman of the Com-
3 mission. I believe there were some changes made. As
4 far as I can see they did not recommend the abolition
5 of the Board of Public Works.

6 I call history to bear that until the report
7 of less than two years ago, there has been no desire, no
8 need, no recommendation for the abolition of the Board
9 of Public Works as a Constitutionally created board in
10 Maryland.

11 Let me digress at this point from what I
12 have prepared. I have the utmost respect for Delegate
13 Henderson, one of my dearest friends and a man whom
14 I respect tremendously.

15 The legislature having given this power, can
16 take it away -- my answer is no, because if the legislature
17 dared to take this power away, the people of Maryland
18 would rise up and in a referendum would overwhelmingly
19 defeat that piece of legislation.

20 You see, we have had a Board of Public Works
21 in Baltimore City. It has control of half of a million

1 dollars and not a billion. We have a strong executive
2 system. The Mayor of Baltimore controls the Board
3 of Public Works and I approve of the control of the
4 Board of Public Works by the governor of Maryland,
5 but don't let that elected official, one or two of them,
6 ever get out of this place where they can say "Nay,
7 Governor, Nay, Mr. Mayor, don't you do that."

8 If any person in Baltimore City suggested
9 amending our Constitution which is called a charter
10 and eliminating the Board of Public Works he couldn't get
11 a corporal's darn of votes to sustain any such
12 position, because whether you like the people who
13 complain and holler and scream in your favor and mine
14 as a citizen and believe me there are times when they
15 can be trying on one's patience, let me say to you it is
16 good to have them there.

17 Let me cite an example, right in this very
18 building that we sit in in this solemn conclave, the
19 Department of Public Works of this state recommended a
20 purchase of a piece of property for one million, 200
21 thousand dollars. But when it reached the public, the

1 Board of Public Works, the Governor under whom that
2 Department was responsible, the State Treasurer,--

3 THE CHAIRMAN: Your ten minutes have expired.

4 DELEGATE SHERBOW: And when they were through,
5 it cost the state \$600,000.

6 I am going to tell you something else about
7 the kind of power you are giving away. Do you know that
8 the Board of Public Works is not required to submit to
9 competitive bidding or to take the lowest bidder and all
10 of this power which you are willing to trust as I am to
11 elected officials who are there to prevent those
12 associated with them on the Board from doing anything
13 wrong, -- would you give this same power to a Governor
14 who may meet and see the public when he chooses and as
15 he chooses?

16 Mr. Chairman, how much total time do I
17 have?

18 THE CHAIRMAN: About two minutes, I think.
19 Exactly two minutes.

20 DELEGATE SHERBOW: I am going to speed on.
21 I would like to mention this one fact. There is a

1 reference to the Curlett Commission report. I was
2 Chairman of the subcommittee. You will have to read
3 that Commission report and you will find what it said.
4 I know because I wrote it. I just sent for it.

5 We were concerned about the fact that the
6 Commission draft had been published and so we said "We
7 will not act on this whole problem at all of whether or
8 not we should ask for the abolition or what should be
9 done. This is not for us to do. "

10 So what our subcommittee said was in effect
11 and I have all the quotations here, but if you do, make
12 sure there are checks and balances. If you are going to
13 rely on the legislature for these checks and balances,
14 be careful that you don't lose them.

15 Now, the history of Maryland is replete with the
16 fact that we have had these cross-checks between one
17 Department of Government and another and I am thankful
18 that we do. We have them within the same department.
19 Don't let anybody tell you that you should buy this pet
20 phrase, "no cross-checks or checks within the department."

21 THE CHAIRMAN: You have one-half minute,

1 Delegate Sherbow.

2 DELEGATE SHERBOW: It sounds all right, but
3 we have it in the legislature where we have two houses
4 and we have it in the courts where we have appeals. I
5 say to you it is time we thought of the people, the people
6 want to know. They want to know before the act is sealed
7 and before it is too late, and they want it done openly.
8 They want it done publicly. They need this protection
9 by an elected official and the history of Baltimore and
10 the history of Maryland all show that the people of the
11 state are vastly better off when there is a Board and
12 there is representation by elected officials who are
13 there, not to follow the dictates of the executive but
14 to be responsive to the will of the people.

15 I urge you to vote to keep the Board of
16 Public Works in the Constitution. It will be the most
17 important act you can do while you are here.

18 THE CHAIRMAN: Delegate Morgan.

19 DELEGATE MORGAN: Mr. Chairman, I yield
20 five minutes to Delegate Gallagher.

21 THE CHAIRMAN: Delegate Gallagher.

1 DELEGATE GALLAGHER: Mr. Chairman and Ladies
2 and Gentlemen of the Committee:

3 The question before the Committee is simply
4 this: Shall the Board of Public Works be continued in the
5 Constitution?

6 I submit that its presence there today is an
7 historical anachronism which had justification in 1867,
8 but certainly not in 1967.

9 Taking a look at the debates of July 12, 1967,
10 on page 390 of the proceedings you will be interested to
11 notice that the data considering the establishment of
12 the Board of Public Works then gets into the questions
13 of how the State's interest in the Chesapeake and Ohio
14 Canal Company under the deed of trust to Phineas Howard
15 Janney and others is handled, how the State's interest
16 in the Chesapeake and Delaware Canal shall be handled, and
17 how the State's interest in the Susquehanna and Tidewater
18 Canal Companies shall be handled.

19 I submit to you that the reading of the record will
20 show that the sole purpose of the Board of Public Works
21 as it originated was simply to determine

1 how the state should protect itself in those semi-public
2 interests in which it had invested so unwisely on those
3 many occasions.

4 It was the function of the Board of Public
5 Works to see to it that the Board did not go into too
6 heavy a public debt and it is said in one of the
7 committee records in the 1867 Constitution that the
8 effect of public debt upon communities is the same as
9 debt upon individuals. It shuts the door of hope. It
10 dispirits and paralyzes their energy.

11 The public debt is a public calamity, and on and
12 on the record rolls to talk about the state unwisely in-
13 vesting in these internal improvements in which there was
14 a great deal of private money and unhappily a great
15 deal of public money as well.

16 I simply say to you that the presence of the
17 Board of Public Works in the Constitution of 1867 was
18 predicated upon the State interest in these subject
19 matters and over the years/the legislature has looked
20 for someplace to dump various duties or to place various
21 duties it has decided it would add to the duties of the

1 Board of Public Works, and consequently if you look at
2 Article 78(a) today and all 75 sections you would see the
3 Maryland Housing Commission, the acquisition of Carvel
4 Hall, and a host of other things that have little to do
5 with the original operation of the Department of Public
6 Works and which could well be taken care of by the Execu-
7 tive Branch of Government and by the appropriate depart-
8 ment.

9 Now, I must disagree with Delegate Sherbow
10 when he talked about what Governor Agnew said. He did
11 not request that the Board of Public Works stay in the
12 Constitution. In testimony before the Committee on the
13 Executive Branch he said, "In my opinion, the Board of
14 Public Works should be continued, but reconstituted; its
15 authority should stem from statutory rather than Consti-
16 tutional stipulation."

17 Delegate Adkins asked him this question: "Do
18 you think this reconsisted Board of Public Works should
19 be a Constitutional dimension?"

20 Agnew said, "No, Mr. Adkins, it should not be.
21 I think it should be handled by statute."

1 So I am afraid Governor Agnew is not the ally
2 to keep the Board of Public Works in the Constitution
3 as has been suggested.

4 I would go to the very language that Judge
5 Sherbow said he wrote in the Curlett Report, and read
6 his only language.

7 THE CHAIRMAN: You have a little less than
8 one minute.

9 DELEGATE GALLAGHER: "The major question in-
10 volving the Board of Public Works is that of the future
11 role. If proposed Constitutional revisions are adopted
12 duties and responsibilities now delegated to the Board
13 by law would become those of the governors or the execu-
14 tive officers responsible to him."

15 I submit that a reading of that language is not
16 what I believe it was represented to us to be.

17 I submit to you finally ladies and gentlemen
18 of this Committee, that the duties of the Department
19 of Public Works can be provided for by statutes. There
20 is no necessity for the duties in the Constitution or
21 for the recognition of the Board in the Constitution if

1 we are to have a modern flexible executive. We must
2 eliminate it and I submit to you all this business
3 about checks and balances within the departments and
4 within the branches of the state government goes against
5 a modern efficient flexible government, and I will submit
6 to you the interest of a 20th Century Chief Executive that
7 we do eliminate the Board of Public Works as a Constitution-
8 al drag, because that is what it is.

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: Mr. Chairman, I yield the
11 balance of my time to Delegate Henderson.

12 THE CHAIRMAN: Delegate Henderson, you
13 have five minutes.

14 DELEGATE HENDERSON: Mr. Chairman and fellow
15 delegates, I have very little to add to what Delegate
16 Gallagher has so eloquently expressed. If you look at
17 the report of the committee you will see on page two, it
18 sets out there how the Constitutional functions of the
19 Board are stated in Article 12 of the present Constitution
20 and you will see there that they all relate to the manage-
21 ment of the state's interest in the works of internal

1 improvement in which in the middle part of the 19th
2 Century the state invested so heavily and so unwisely.

3 All of the modern powers exercised by the Board,
4 every one, as I understand it, were granted to them
5 by the legislature, so that to call this a Constitutional
6 Board, a Board of Constitutional establishment is
7 really a misnomer; it is a Board which as mentioned was
8 set up in the Constitution for an entirely different pur-
9 pose , and which has now been used as a catch-all
10 in various categories by the legislature over the years
11 and I suggest that one possible reason why this Board
12 has been utilized may have been political, because since
13 the turn of the century we have had four Republican
14 Governors, but the legislature throughout all of those
15 governorships has been democratic and so has the
16 Comptroller, so that the check and balance which was
17 properly set up to continue the democratic establishment
18 in running the state, it has been done all these years.
19 But it has resulted in factional strife by dividing the
20 executive authority, and I suggest resulted in a political
21 impact in that direction also somewhat what you might

1 call political rivalry between the different members.

2 Now, all of these functions now exercised by
3 the Board can be given, bestowed upon the same officials
4 in the Constitution we are now adopting, so I see no
5 reason whatever, and it seems to me it would cause a
6 great deal of confusion if we continued in the Consti-
7 tution a Board which under the present Constitution has
8 functions which are now completely archaic.

9 THE CHAIRMAN: Delegate Dorsey, do you desire
10 to offer your amendment at this time?

11 DELEGATE DORSEY: Yes, sir.

12 THE CHAIRMAN: Delegate Dorsey moves that
13 Recommendation No. 1 of the Committee Report EB-1 be
14 amended by striking the word "not" in line 14.

15 Is there a second to that motion?

16 (It was seconded.)

17 THE CHAIRMAN: The question there now arises on
18 the motion rather than on the Committee Report or the
19 first Recommendation of the Committee Report. We can
20 proceed to the uncontrolled debate. Thirty minutes is
21 allotted for this purpose.

1 Does any delegate desire to speak in favor
2 of the amendment, that is in opposition to the Committee
3 Report?

4 Delegate Storm.

5 DELEGATE STORM: If I am allowed to speak
6 at this time, I would like to say a few things.

7 THE CHAIRMAN: You may proceed.

8 DELEGATE STORM: Judge Henderson has said that
9 the powers of the Board of Public Works can be bestowed
10 on the same officials. I believe that if you do not adopt
11 this amendment that this would be impossible.

12 I also suggest to you that under sections
13 yet to come before you, the legislature will not be able
14 to provide for a Board of Public Workswith the functions
15 as now endowed to them.

16 Delegate Fornos a few minutes ago said that
17 he was unsatisfied with the Board of Public Works because
18 it was a super legislature, changing appropriations --

19 THE CHAIRMAN: Delegate Storm, pardon me,
20 please. For what purpose does Delegate Morgan rise?

21 DELEGATE MORGAN: Will the gentleman yield?

1 THE CHAIRMAN: Delegate Storm, will you yield
2 to a question?

3 DELEGATE STORM: As soon as I finish the
4 sentence. This, ladies and gentlemen of the Convention
5 emphasizes the point that the Board of Public Works is
6 not strictly just an executive, does not exercise just
7 executive power. They have legislative power. That is
8 why the legislature is represented on the Board of Public
9 Works through the elected treasurer.

10 Please do not eliminate this. Now, Mr.
11 Morgan, I will be glad to answer the question. I hope this
12 is charged on your time.

13 THE CHAIRMAN: No, the question is on your
14 time.

15 DELEGATE STORM: I will yield.

16 THE CHAIRMAN: Delegate Morgan.

17 DELEGATE MORGAN: What is the language that
18 prevents a Board of Public Works from being prevented
19 by the legislature?

20 THE CHAIRMAN: Delegate Storm.

21 DELEGATE STORM: It is that interpretation along

1 with Mr. Raley's and others that the later sections will
2 make it impossible because of the governor having the
3 right to reorganize and it would have to be a principal
4 department in order to have any chance of being. --

5 THE CHAIRMAN: Just a second. Let Delegate
6 Storm finish.

7 Proceed.

8 DELEGATE STORM: I ask you to please consider
9 this very carefully and examine the sections yet to come
10 and see what powers are being given to the government
11 and what restrictions are being placed on the legislature.

12 I think you will then come to the same con-
13 clusion that Mr. Raley and others have come to. The
14 legislature I believe will not be able to so provide. I
15 believe that answers my Chairman's question and I would
16 like to go with just one more thought.

17 THE CHAIRMAN: If the Chair may interrupt you
18 so the record will be clear, you refer to sections later
19 to come; could you identify those for us specifically,
20 please?

21 DELEGATE STORM: 4.18 especially. Number 4.20,

1 4.21, and 4.22.

2 THE CHAIRMAN: You are referring to sections
3 of Committee Recommendation EB-1, I take it?

4 DELEGATE STORM: Yes, on blue paper. If you
5 will examine these sections very closely you will see
6 that we are restricting the legislature and empower the
7 government with more power than anyone else I know of in
8 the United States has.

9 We already have a strong executive and by this
10 we will give him an absolute through street on unbridled
11 executive authority without even a single red light being
12 shown--

13 THE CHAIRMAN: Delegate Storm, your time has
14 expired.

15 DELEGATE STORM: My time--

16 THE CHAIRMAN: Your time has expired.

17 DELEGATE STORM: I thank you for that much.

18 THE CHAIRMAN: Any delegate desire to speak in
19 favor of the Committee Recommendation?

20 Delegate Morgan?

21 DELEGATE MORGAN: I would like to read the

1 first section of Section 4.20. "The head of each prin-
2 cipal department of the executive branch, including the
3 chief legal officer and the chief fiscal officer, shall
4 be a single executive unless otherwise provided by law."

5 THE CHAIRMAN: Any other delegate desire to
6 speak in favor of the amendment against the Committee
7 Recommendation?

8 Delegate Schneider?

9 DELEGATE SCHNEIDER: May I make a parliamentary
10 inquiry?

11 THE CHAIRMAN: State the inquiry.

12 DELEGATE SCHNEIDER: Isn't this a rather
13 unusual type of vote, because if we vote yes, then it
14 will read that the committee **recommends** that the
15 Board of Public Works be revised; then I guess we would
16 have to send it back to the committee where the committee
17 would consider the section on the Board of Public Works
18 and would write a section which would come out to the
19 floor and then be debated again and voted upon.

20 It would seem to me that a better way to
21 approach it would be that we should consider amendments

1 to the Executive Committee recommendation and amendments
2 to put sections in the specific language and thereby
3 save time.

4 THE CHAIRMAN: It would not be necessary for
5 the whole matter to go back to the committee if the
6 result follows that you have indicated, namely that the
7 amendment is adopted and then the first paragraph of the
8 report as amended is also adopted;^{an} amendment to provide
9 for a Board of Public Works could be submitted with
10 Committee Recommendation, EB-1, when that is before the
11 Committee of the Whole for consideration.

12 That follows immediately after this report.

13 Delegate Schneider.

14 DELEGATE SCHNEIDER: If the amendment is
15 defeated and the Committee Recommendation one or Report,
16 Committee Report Number one says it shall not be pro-
17 vided for in the Constitution, is passed, would that pre-
18 clude a minority from offering^{an} amendment to establishing
19 a Board of Public Works?

20 THE CHAIRMAN: It would not.

21 DELEGATE SCHNEIDER: Thank you.

1 THE CHAIRMAN: Any delegate want to speak in
2 favor of the motion in opposition to the Committee
3 Report? Delegate Sybert.

4 DELEGATE SYBERT: I rise in favor of the motion
5 to strike the word "not" from the Committee Recommendation
6 so that the Board of Public Works will be provided for.

7 Preliminarily, I would like to clear up one
8 point which has been raised by question, and that is
9 whether all the functions on the Board of Public
10 Works are purely statutory. I refer the delegates to page
11 two of the Committee Report, EB-1, where at the bottom
12 of the second long paragraph, it is stated that the only
13 Constitutional function which a Board still exercises is
14 provided for in Article 3, Section 34, of the present
15 Constitution and authorizes the Board to borrow money
16 to meet temporary deficiencies in the treasury.

17 I submit, Mr. Chairman, that that is a very,
18 very important Constitutional function which the people
19 have committed to the Board of Public Works. It is true
20 that over the years because I believe of the efficiency
21 of the Board of Public Works and the concept of having such

1 a check on an inept or corrupt governor, that the
2 legislature has committed to the Board many, many functions.

3 The statutes providing for these functions
4 were distributed to us on the committee and possibly to
5 every delegate and they comprise 33 pages of statutes
6 setting forth the powers and the duties of the Board of
7 Public Works.

8 Mr. Chairman, former governor Tawes told us
9 on the Committee on the Executive Branch that Maryland
10 already has one of the strongest governors in the nation,
11 so we don't have a situation where it is necessary to
12 bolster a heretofore weak governor. We have heard
13 many times in the public press and here today on the floor
14 at times that the Board of Public Works constitutes a
15 hobble on the ankles of the governor.

16 No one has pointed out any specific instance
17 where the governor has been hampered in doing what the
18 law provides as governor. The function of the Board
19 of Public Works is to see to it that the law is
20 carried out with respect to state expenditures, state
21 purchases and things of that nature.

1 Mr. Chairman, and fellow delegates, I submit
2 the question here is whether or not we are going to
3 take a further power away from the governor and -- away
4 from the people and do away with the state comptroller,
5 do away with the Board of Public Works or put the legis-
6 lature in a position to abolish that whole. I submit
7 we should not.

8 THE CHAIRMAN: Delegate Maurer.

9 DELEGATE MAURER: I arise to oppose the
10 amendment. If we want the Executive Branch to be subject
11 to the same kind of reasonable standards which this
12 democratic Convention demonstrated for executive and
13 judicial branches then it is essential that the Board
14 of Public Works be Constitutionalized.

15 When the Board of Public Works was established
16 in the mid-19th Century it represented in part political
17 philosophy, in part a response to political problems of
18 the day, but also in part to what was known about
19 management techniques at that time.

20 At that time, the time of the Convention 100
21 years ago the typewriter and the telephone were on the

1 verge of being invented. The average manufacturing es-
2 tablishment in Maryland had seven employees. We are all
3 keenly aware of the scientific and industrial revolutions
4 which have occurred in the intervening years but we
5 can't overlook the fact that the managerial revolution has
6 paralleled the other revolution and has assisted in our
7 national growth.

8 More than a knowledge of atoms and molecules,
9 more than scientific machinery has made possible the
10 efficient and vast business enterprises which exist today
11 and complex projects such as space flights. It has taken
12 new methods of management and the development of or-
13 ganizational patterns which can be applied appropriately
14 and now it is time that these modern managerial tech-
15 niques are applied to our state government.

16 As an example of what happens under the
17 Board of Public Works, last April the Board directed that
18 the Director of Public Improvement stop paying bills over
19 \$200 without the prior approval of the Board of Public
20 Works.

21 Should you dissolve the Board of Public

1 Works in the Constitution then for decades the legislature
2 will not have the freedom to modernize the framework in
3 the executive Branch.

4 THE CHAIRMAN: For what purpose does Delegate
5 Storm rise?

6 DELEGATE STORM: Would she yield to a question?

7 THE CHAIRMAN: Would you yield?

8 DELEGATE MAURER: I want to -- I will yield,
9 if I may finish two sentences.

10 THE CHAIRMAN: She will yield later, she wants
11 to finish two sentences.

12 DELEGATE MAURER: Under the proposed Committee
13 Report the legislature will be able to organize and
14 reorganize the agencies and departments, and while this is
15 important, the crucial element, the element of executive
16 authority, commensurate with executive responsibility,
17 will be placed beyond the reach of ordinary law.

18 I urge you to support the Committee Report and
19 to vote against the amendment.

20 THE CHAIRMAN: I am afraid your time has become
21 expired. You have too little time even for a question

1 to be stated.

2 DELEGATE MAURER: I apologize.

3 THE CHAIRMAN: Delegate Raley.

4 DELEGATE RALEY: I want to direct a question
5 to Chairman Morgan.

6 THE CHAIRMAN: Does any delegate want to speak
7 in favor of the amendment against the Committee Report?
8 Delegate Child.

9 DELEGATE CHILD: Mr. Chairman, I of course come
10 from a small county and Delegate Grant and myself are
11 not supposed to be listened to very much, but we would
12 like to give you our views just the same.

13 It seems to me that the people who created
14 this Board of Public Works did a pretty good job. First
15 the people elected a governor so that the governor as
16 one member of that Board is directly responsible to the
17 people.

18 Secondly, the people elected the legislature
19 and the legislature in turn elects a treasurer and the
20 legislature, that is the treasurer, is indirectly
21 responsible to the people.

1 Thirdly, the Comptroller is elected directly
2 by the people and directly responsible to the people so
3 that you have three people composing this Board who
4 are directly or indirectly responsible to the people.

5 The system has worked. The Board of Public
6 Works has worked. There has been little or no criticism
7 in my time against the Board of Public Works and the ques-
8 tion I ask: If we have something that has worked for a
9 hundred years, why change it for something that we know
10 naught of?

11 Now, another thing from the small town -- we
12 have taken away pretty well members of our legislature,
13 we have to travel maybe 75 miles to find out who our
14 delegate is, but we would like the privilege of electing
15 a comptroller.

16 You have taken away a lot of our money in
17 taxes and every time that the legislature meets, they
18 take away a little bit more, so we would like to be able
19 to vote for the man who collects that money and go to
20 see him if we get anything wrong with our tax return.

21 I am for this amendment. I am for the Board

1 of Public Works.

2 THE CHAIRMAN: Delegate Morgan, do you yield
3 to a question from Delegate Storm?

4 DELEGATE MORGAN: I do.

5 THE CHAIRMAN: Delegate Storm.

6 DELEGATE STORM: Chairman Morgan, was it not
7 true that the Committee on the Executive was originally
8 divided 10 to 10 and one changed in order to make you able
9 to have the majority and minority report?

10 THE CHAIRMAN: Delegate Morgan.

11 DELEGATE MORGAN: One did change.

12 THE CHAIRMAN: Delegate Storm.

13 DELEGATE STORM: One other question. The
14 lady from Montgomery County said with the managerial
15 revolution, we had to have our state function as an
16 efficient and vast business enterprise.

17 Is it not true that some of the majority
18 feel that the state of Maryland should be run for the
19 benefit of stockholders as they term the voters, and that
20 business practices in management should be followed to
21 the extent that the head of the corporation would have

1 unbridled power. Was this the philosophy of some of the
2 majority?

3 THE CHAIRMAN: Delegate Morgan.

4 DELEGATE MORGAN: I would suggest that the
5 head of a corporation has a lot more power than the
6 governor of Maryland does at the present time.

7 THE CHAIRMAN: Delegate Storm.

8 DELEGATE SOTRM: Isn't it true if we do away
9 with the Board of Public Works, and enable the governor
10 to make decisions of a legislative character and to sell
11 property of the state and executive leases, he will then
12 be more like a corporation executive and he will be very
13 efficient but not a governor?

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: Both you and, I submit,
16 Delegate Sherbow, are laboring under a misapprehension.

17 I specifically said in the presentation of the
18 committee report, that the committee was not recommending
19 that the Board of Public Works be abolished. All we were
20 doing was recommending that it not be established in the
21 Constitution.

1 Delegate Sherbow said that the legislature, if it
2 tried to mess around with the Board of Public Works, the
3 people would rise up in their wrath. I don't know why
4 they wouldn't rise up in their wrath just as much if it
5 were a legislative Board rather than a Constitutional
6 Board.

7 THE CHAIRMAN: Delegate Storm.

8 DELEGATE STORM: Thank you.

9 THE CHAIRMAN: Delegate Raley.

10 DELEGATE RALEY: I will be perfectly happy to
11 go along with what you say about this not being in the
12 Constitution but I think the Board of Public Works does
13 serve a purpose, but I just wish you would explain to
14 me where they can do it.

15 You pointed out in reply to the question on
16 4.20, you said "Unless otherwise provided by law", but
17 that applies only to the head of each principal department,
18 isn't that correct, sir?

19 THE CHAIRMAN: Delegate Morgan.

20 DELEGATE MORGAN: That is correct. I thought
21 the assumption was that the Board of Public Works would

1 be a principal department. If it is, it can be included
2 as a Board within one of the principal departments.

3 THE CHAIRMAN: Delegate Raley.

4 DELEGATE RALEY: Under 4.18 where it says
5 "All duties shall be under a principal department", I can't
6 conceive that it would be considered as part of a prin-
7 cipal department. Further, it seems to me, and I want
8 your thinking on this, that unless this Board was mentioned
9 in the Constitution that it probably would be illegal
10 anyhow because under 4.01 it says if all executive
11 powers vested in the government shall do the laws.

12 If you don't put something in here and let the
13 assembly do it, it can't be done.

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: I -- just the way the General
16 Assembly enacts a law and says it can't be carried out
17 by the Secretary of this or the head of this Department
18 or that department, I suppose that is, in a sense, inter-
19 fering with the executive authority, but it has never
20 been held to do so.

21 I submit that if you took the Board of Public

1 Works out of the Constitution the legislature could set
2 up a Board of Public Works and put the governor on it, they
3 could designate somebody appointed by the governor, we could
4 put somebody designated by the legislature.

5 THE CHAIRMAN: Delegate Raley.

6 DELEGATE RALEY: Chairman Morgan, wouldn't you
7 agree though , would you agree that there is
8 some doubt whether the legislature could do it?

9 DELEGATE MORGAN: No doubt about it.

10 There is no doubt in my mind.

11 THE CHAIRMAN: Does any other delegate desire
12 to speak in favor of the amendment?

13 Delegate James Clark.

14 DELEGATE JAMES CLARK: Mr. Chairman and Ladies
15 and gentlemen of the Convention. What we are arguing about
16 is that those people thought maybe we need a Board of
17 Public Works. Judge Henderson asked a good while ago:
18 Why is it better to have it in the Constitution than
19 allow the legislature to establish the Board of Public
20 Works?

21 The answer to this question has determined

1 how I shall vote on it and to me if it is in the
2 Constitution who shall be on the Board, then it is not
3 subject to change as it would be if the Board of Public
4 Works were established by the legislature.

5 Those of us who have been around the
6 legislature a while know that the Boards that are set up,
7 the membership by the legislature, are very often subject
8 to change by the legislature and we have seen some boards
9 that are changed every four years, because a Republican
10 is elected in one place in Maryland. This time you have
11 a Democratic Governor and then you have a Democrat elected
12 back in that county and a Republican Governor and so we
13 have to go through and change the way the boards are
14 appointed, the make-up of them sometimes.

15 If we are going to have a Board of Public
16 Works, and we allow it to be set up by the legislature,
17 we are just going to have a political football.

18 When you get a Republican governor, a Demo-
19 cratic legislature is going to want to change that
20 membership to take the control away from the Republican
21 governor. You may think it is far-fetched, but it could

1 happen. It happened before.

2 Therefore, I think this is a real cogent
3 reason for putting the Board of Public Works in the
4 Constitution, so it will not be subject to such shenani-
5 gans.

6 Now, if you think we have to have a Board of
7 Public Works and I think we do, and most people think
8 we do, then I think you should give it this protection.
9 Certainly this is more important than a lot of things
10 we are voting to put into this Constitution. It will
11 afford the people of this state more protection over the
12 years than most anything we can do.

13 THE CHAIRMAN: Any other delegate desire to
14 speak in opposition?

15 Delegate Winslow?

16 DELEGATE WINSLOW: In response to a question
17 raised by Delegate Raley he read: "The Executive power of
18 the state shall be vested in the government", and he
19 asked whether that would block the Board of Public
20 Works. The Constitution, 1867 Article 1, "The Executive
21 power of a state shall be vested in a governor."

1 THE CHAIRMAN: Does any delegate desire to
2 speak in favor of the amendment in opposition to the
3 committee recommendation?

4 Does any delegate desire to speak in opposition
5 to the amendment?

6 Delegate Hanson.

7 DELEGATE HANSON: Mr. Chairman, I have listened
8 with interest to this debate, and there are some questions
9 which continued to exist in my mind which seemed to me
10 to tip the balance very heavily in favor of the Committee
11 Recommendation and against including the Board of Public
12 Works in the Constitution.

13 First of all, if we are going to create such an
14 organization within the Constitution, I think it is incum-
15 bent upon us to say in the Constitution what that organiza-
16 tion is to do. Yet we learned that all of the functions
17 now performed are performed by statute and properly
18 should be performed by statute. Some of the functions now
19 performed might properly be taken away and placed somewhere
20 else. For instance, the power to approve leases, or there
21 may be some of the other activities which are carried on

1 by the board which could be better vested in a new
2 department of administration or some new executive agency.

3 Another problem which seems to me to be revealed
4 in the statements of most of the delegates in favor of the
5 retention of the Board of Public Works is a basic distrust
6 in the Chief Executive of the State. They agree, however,
7 that the Board of Public Works should not prevent the
8 Governor from acting, and therefore, they argue, well,
9 it would be all right with them if we added two new members
10 to the Board of Public Works so that the Governor would
11 always have a majority on this particular Board.

12 Well, there are two questions that arise as a
13 result of this piece of revelation: First of all, in the
14 Board of Public Works as it is presently constituted in the
15 Constitution, while you could argue that if you had two
16 fine, outstanding public spirited officials in addition to
17 the governor and the governor were corrupt, they
18 would certainly check him. But what is there in the Consti-
19 tution as provided that would protect us from two inept
20 officials and a good, public spirited Governor? There
21 is nothing.

1 They could say this could be taken care of
2 by the governor making two of his own appointments. You
3 can't have it work both ways. If the objective of public
4 works is to give us public disclosure, it can be done by
5 statute. It is not a Constitutional provision that the
6 activities of the Board be disclosed to the Governor, but
7 statutory.

8 It would also be most inadvisable to place
9 in the Constitution the right of two gubernatorial appointees
10 to sit on the Board of Public Works. It would seem to
11 me then unless these arguments can be answered -- and
12 I have not heard them answered thus far -- that we should
13 leave the legislature to create a Board of Public Works, but
14 we should not ourselves create such a Board in the Constitu-
15 tion.

16 THE CHAIRMAN: Does any other delegate desire
17 to speak in favor of the amendment?

18 Delegate Chabot.

19 DELEGATE CHABOT: I must regretfully depart from
20 three of the delegates in Montgomery County.

21 Section 4.19 provides at lines 26 and 27 that

1 the governor may increase, modify, decrease, diminish, and
2 change their functions, powers and duties -- that is, the
3 functions, powers and duties of any of the agencies or of-
4 ficers of the executive branch, and presumably if the
5 legislature established a board of Public Works under the
6 proposal of the Executive Branch Committee, it would be one
7 of the things whose powers can be so affected by the Governor.
8 It is true that the legislature has an opportunity to over-
9 ride any attempt by the governor to make ineffective estab-
10 lishment of such a board, but the legislature has to do it by
11 acting within 50 days after the governor has submitted his
12 reorganization recommendation, and as we know from the
13 current constitution and some opportunity to look at
14 the other committee recommendations, this is just the very
15 time that the legislature, to the extent that it is involved
16 in any great activity, is probably going to be involved in
17 the consideration of the budget.

18 I suggest that while this power of the legis-
19 lature to preserve whatever power it might decide to give
20 to the Board of Public Works is theoretically present, as
21 a practical matter if the Governor wanted to diminish it,

1 to distribute it around so it couldn't be effective, to
2 eliminate any publicity the legislature might have required
3 for the board action, any resourceful governor could delay
4 the legislature acting for this 50-day period.

5 The question therefore is not whether it is
6 desirable that this be a Constitutional board, but
7 whether it is desirable that we have any such board. If
8 you feel we are to have such board, the only way to pro-
9 tect it is to make it Constitutional.

10 THE CHAIRMAN: Delegate Grumbacher.

11 DELEGATE GRUMBACHER: Mr. Chairman, I rise to
12 correct what I believe is a misunderstanding on the
13 big hassle we had last year in the legislature over the
14 purchase of some land from the Naval Academy Athletic
15 Association.

16 My memory seems to be that at that time the
17 Department of Public Improvements, not the Board of
18 Public Works, was negotiating for the purchase of that
19 property at 1,300,000, that three members of the House of
20 Delegates got together and had at least three appraisals
21 made, all of which were very substantially low, in fact

1 a fraction of this figure; that the Governor and the
2 legislature together in cooperation then worked out and
3 set up a figure of \$800,000 as a limit that the Board of
4 Public Works could pay for that property; and that is the
5 amount which the Board of Public Works approved on the
6 10th of January of this year.

7 THE CHAIRMAN: Delegate Bushong.

8 DELEGATE BUSHONG: Mr. Chairman, I can't get
9 over the fact that if you leave the Board of Public Works
10 out of the Constitution when it has been in there that I
11 can see that the Governor of Maryland will be able to do
12 pretty much what he wants to do insofar as the legislature
13 gives him authority, and in answer to Delegate Hanson, I
14 am surprised that a person as knowing in public law as he
15 is would not know that a three-to-two minority report
16 published might do some good for the people of Maryland if
17 there were something rotten in Denmark.

18 THE CHAIRMAN: Delegate Gleason.

19 DELEGATE GLEASON: Mr. Chairman and fellow
20 Delegates: In listening to the discussion that has taken
21 place with respect to this proposal today, I am somewhat

1 at a loss with respect to its evolving around the question
2 of its contributing or adding to the Governor's power.

3 I had one experience in appearing before the
4 Board of Public Works representing some clients who owned
5 some property they were duped into buying in Massapique
6 Island.

7 The government wanted to take over the property.
8 After analyzing the proposal, I felt it was a bad deal for
9 the State government. I was not opposed to having that
10 property taken over for all the people.

11 We were entitled to a two-day hearing before the
12 Board of Public Works. These property owners constituted
13 something like over 1,000 individual families. I felt then
14 it would have been much better if those people had an oppor-
15 tunity to get to their House of Delegates and State Senate
16 and urge their case before committees of the General Assembly
17 with respect to that proposal of the Department of the
18 Interior.

19 I feel this is not a question of adding to the
20 Governor's power. If I felt it was so, I would vote for
21 the proposal and against the committee recommendation.

1 My answer to Senator Clark is if they want to
2 change this every four years, that is what we entrust them
3 to do; if in their judgment it is the state of things that
4 it be changed, it should be.

5 I don't like a legislature to delegate their
6 power to a body that is not responsible to the people. I
7 hope the committee recommendation will be supported.

8 THE CHAIRMAN: Does any delegate desire to
9 speak in favor of the amendment against the committee
10 recommendation? There is opportunity for one speaker.

11 The Chair recognizes Delegate Mason to speak in
12 favor of the recommendation for one minute.

13 DELEGATE MASON: I merely want to ask Delegate
14 Morgan a question.

15 THE CHAIRMAN: That would not be possible, be-
16 cause he is on the opposite side.

17 Does anyone desire to speak for one minute in
18 favor of the committee amendment?

19 DELEGATE MASON: I have a brief question.

20 THE CHAIRMAN: To whom?

21 DELEGATE MASON: Chairman Morgan.

1 THE CHAIRMAN: Does anyone desire to speak?

2 DELEGATE MASON: Since I can't ask a question,
3 I would like to speak in favor of the Board of Public Works.
4 I have to have the question resolved.

5 The Committee Report in Section 4.20 states that
6 "The head of each principal department of the executive
7 branch, including the chief legal officer and the chief
8 fiscal officer, shall be a single executive unless otherwise
9 provided by law."

10 It says, "When a board or commission is at the
11 head of a principal department a chief administrative officer
12 shall be provided for it by law."

13 THE CHAIRMAN: You have one-half minute.

14 DELEGATE MASON: In our discussions in the
15 committee is was agreed that all board and commissions
16 as far as possible should not be policy making boards.
17 I am wondering how we can establish a B oard of Public Works
18 under the draft article proposed by the Executive Branch
19 when all department heads must be a single executive; and
20 if there should be a board, a chief administrative officer
21 should be provided.

1 THE CHAIRMAN: The Chair recognizes
2 Delegate Gallagher for one minute.

3 DELEGATE GALLAGHER: Mr. Chairman and ladies
4 and gentlemen of the Committee:

5 I think it should be made quite clear when
6 the legislature elects a Treasurer, although they are fine
7 men, that is about the last the legislature sees the
8 treasurer. As a matter of fact, there is a man sitting
9 as delegate who tried to buck the individual who was se-
10 lected by the administration to be Treasurer, and he didn't
11 make it.

12 I think all this about representatives of the
13 Board of Public Works is fine in theory. In practice it
14 can turn out to be a far different thing than what it is.
15 The Board of Public Works has but one Constitutional
16 purpose, and that is the borrowing of money to meet / temporary deficiencies.

17 Under the 1864 Constitution the General Assembly
18 was given this power. The power has in effect gone from
19 one place to another.

20 May I say in summation the question of the
21 existence of a Board of Public Works seems to me really

1 does not fall strictly under the executive, but constitutes
2 rather a fourth tripartite type of existence such as was
3 described by Mr. Gleason, and I think that all the reasons
4 which have been advanced with respect to why it ought not to
5 be included in the Constitution have remaind valid through-
6 out this debate.

7 THE CHAIRMAN: The question now arises under
8 this --

9 DELEGATE MORGAN: Mr. Chairman.

10 THE CHAIRMAN: Delegate Morgan.

11 DELEGATE MORGAN: May I introduce one little
12 note of levity in these proceedings?

13 Governor McKeldin was testifying before
14 our committee, and he was asked a question, Governor,
15 hasn't the State of Maryland gotten along pretty well
16 with the Board of Public Works, with its elected Comptroller
17 and elected Attorney General?"

18 He thought a minute, and he said, "The only
19 way I can answer the question is to recall an incident in
20 Baltimore City, when an Irish policeman came upon a drunk
21 leaning against the lamp post, and he said, 'My man,

1 if you want to stand here, you better move on.'" (Laughter.)

2 THE CHAIRMAN: The question arises on the adop-
3 tion of the amendment to the committee report. In view
4 of the Chair's rather short answer to the parliamentary
5 inquiry of Delegate Schneider, I think I should amplify
6 somewhat what the Chair conceives to be the procedure.
7 We now have under consideration Committee Report EB-1.
8 The next matter on the agenda is Committee Recommendation
9 EB-1. The Chair has heretofore followed the practice and
10 has announced that a rising of the Committee of the Whole
11 for purposes of meal recesses would not be deemed to be
12 a rising of the committee so as to prevent consideration of
13 matters that otherwise would be proper to be considered
14 before the same session of the Committee of the Whole.

15 If, however, the Committee of the Whole rises
16 to report and does report on a matter, that matter is not,
17 under the rules, thereafter subject to consideration of the
18 Committee of the Whole. Accordingly, the procedure, as the
19 Chair conceives it, is this:

20 The matter now before you is the adoption of
21 the amendment. If the amendment is adopted, then the

1 report, or rather, paragraph 1 of the report as amended is
2 before you, and will be submitted to your vote.

3 If it is then approved, the Committee will have,
4 the Committee of the Whole will have directed that there
5 be a provision in the Constitution with respect to the
6 Board of Public Works. It would not have directed the pre-
7 cise terms or language.

8 An amendment to Committee Recommendation EB-1
9 stating such terms and language would, of course, be in order
10 at the time of consideration of Committee Recommendation
11 EB-1, because it would not be inconsistent with the final
12 action on the committee report.

13 On the other hand, if the amendment should fail,
14 the amendment to the committee report, and thereafter
15 the committee report recommending that there not be a re-
16 vision in the Constitution with respect to the Board of
17 Public Works should be approved, and thereafter the com-
18 mittee should rise other than for meal recess and report
19 that recommendation to the Convention, then it would not
20 be in order thereafter on consideration of Committee Recom-
21 mendation EB-1 to consider an amendment to that

1 recommendation providing for a board, because that would
2 be inconsistent with the action of the Committee of the
3 Whole.

4 Delegate Schneider.

5 DELEGATE SCHNEIDER: May I make a further
6 parliamentary inquiry?

7 THE CHAIRMAN: Yes.

8 DELEGATE SCHNEIDER: Suppose we did adopt the
9 amendment and that we have manifested our intent that there
10 should be a Board of Public Works in the Constitution, and
11 then we start amending. Suppose at that particular
12 time some of the members have decided that there shouldn't
13 be and the majority says there should be. How, then,
14 considering
would we ever get out of the dilemma of/amendments ad infini-
15 tum when they are all defeated because the majority doesn't
16 want a Board of Public Works?

17 THE CHAIRMAN: I would assume if the recommenda-
18 tion was not implemented at some point it could not be
19 carried into effect, and it could only be implemented by
20 adoption of EB-1, which would carry it into effect.

21 I further say that the Convention has complete

1 power to disregard any recommendation of the Committee of
2 the Whole.

3 For what purpose does Delegate Pullen rise?

4 DELEGATE PULLEN: Inquiry.

5 I have just gotten in. I want to vote to retain
6 the Board of Public Works. How do I vote on this next
7 proposal?

8 THE CHAIRMAN: Do you desire to retain it in the
9 Constitution or as a statutory board?

10 DELEGATE PULLEN: In the Constitution.

11 THE CHAIRMAN: You would vote in favor of the
12 amendment, and if it was adopted, you would vote in favor
13 of the committee report as amended.

14 DELEGATE PULLEN: Thank you.

15 THE CHAIRMAN: Is there any further inquiry
16 as to this rather confused parliamentary matter?
17 If not, the Clerk will ring the quorum bell.

18 The amendment before you is the amendment to
19 delete the word "not" in line 14 of Committee Report EB-1.
20 A vote Aye is a vote in favor of that amendment, and would
21 result in the deletion of that word from the committee

1 report; that is, from Recommendation 1 of the Committee
2 Report.

3 The report would then be recommending that the
4 Board of Public Works be provided for in the Constitution.

5 A vote No is a vote against the proposed
6 amendment. If the amendment failed, it would be the
7 committee recommendation as it is printed in Report EB-1,
8 that the Board of Public Works not be provided for in the
9 Constitution.

10 That recommendation would then be submitted to
11 another vote.

12 The question now arises on the adoption of
13 the amendment. A vote Aye is a vote in favor of the amend-
14 ment, and deletes the word "not."

15 A vote No is a vote against the amendment.

16 Cast your votes.

17 Has every delegate voted? Does any delegate
18 desire to change his vote?

19 The Clerk will record the vote.

20 There being 68 votes in the affirmative and 66 in
21 the negative, the amendment to Committee Recommendation

1 EB-1 is now adopted.

2 The question now arises on the adoption of the
3 committee recommendation as amended. The committee
4 recommendation is that the Board of Public Works be provided
5 for in the Constitution.

6 A vote Aye is a vote in favor of that recommenda-
7 tion as amended. A vote No is a vote against.

8 For what purpose does Delegate Case rise?

9 DELEGATE CASE: Mr. Chairman, I have a question
10 that bothers me a little bit, if I may ask it.
11 The recommendation now reads, "The Committee recommends
12 that the" -- and I underscore the word "the" -- "Public
13 Works Board be provided for in the Constitution."

14 Are we voting on that, or on the question of
15 whether or not "a" Board of Public Works would be provided?

16 THE CHAIRMAN: I think from the report of the
17 minority that "a" is intended. I will direct it to dele-
18 gate Dorsey.

19 DELEGATE DORSEY: If Delegate Case wants to
20 substitute the letter "a" for the word "the", there would
21 be no objection.

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1 THE CHAIRMAN: Is there any objection from any
2 member of the Committee of the Whole to the modification
3 of the recommendation as amended, to strike the word "the"
4 before "Board" in line 13, and substitute the word "a"?

5 The Chair hears no objection, and will consider
6 the recommendation as thus modified.

7 Delegate Hardwicke.

8 DELEGATE HARDWICKE: I have one more question.
9 This may be asking you to repeat something you have said
10 already, Mr. Chairman.

11 If we vote now to adopt the recommendation as
12 amended, will a motion to reconsider be out of order at a
13 later time?

14 THE CHAIRMAN: It will be out of order at a
15 time after the Committee of the Whole has risen to report
16 the recommendation. I cannot say when that will be, because
17 we have heretofore followed the practice of not considering
18 a rising for the purpose of adjournment as being a rising for
19 the report of the matter under consideration; therefore,
20 I would say that if Committee Report EB-1 were considered
21 again this evening and the consideration of that report were

1 concluded, which would mean all five points in the report
2 prior to the adjournment this evening, and the Committee
3 of the Whole rose and reported its action with respect
4 to Committee Report EB-1, a motion to reconsider at a later
5 session of the Committee of the Whole would not be in order.

6 If action is taken now, it is quite obvious that
7 we cannot conclude consideration of the report before the
8 dinner hour recess, and a motion to reconsider this evening
9 would still be in order, because Committee Report EB-1
10 would still be before the Committee of the Whole.

11 If Committee Report EB-1 is still before the
12 Committee of the Whole tomorrow morning, a motion to re-
13 consider would be in order.

14 It is not in order at any time after the Com-
15 mittee of the Whole has reported with respect to Committee
16 Report EB-1.

17 Is there any further question?

18 Delegate Schneider.

19 DELEGATE SCHNEIDER: If the motion on the floor
20 is defeated in its next vote, which I think it might be,
21 would we be able to raise this question about amendment

1 when the committee recommendation was later brought forth?

2 THE CHAIRMAN: I am not sure what you mean
3 when you say "this question."

4 DELEGATE SCHNEIDER: In other words, could
5 we have another vote, another chance to consider the
6 Board of Public Works when the Committee Recommendation EB-1
7 is brought forward to the floor in the matter of a day or
8 so?

9 THE CHAIRMAN: On the assumption that the
10 present motion is defeated -- the Chair would rule that
11 there was no committee recommendation on this matter one
12 way or the other, and any pertinent amendment to Committee
13 Recommendation EB-1 would then be in order.

14 Are you ready for the question?

15 The question arises on the approval of Commit-
16 tee Recommendation 1 of Committee Report EB-1, as amended.
17 As amended, that recommendation will read as follows:

18 "The committee recommends that the Board of
19 Public Works be provided for in the Constitution."

20 A vote Aye is a vote in favor of that recom-
21 mendation; a vote No, a vote against.

1 Cast your votes.

2 Has every delegate voted? Does any delegate
3 desire to change his vote?

4 The Clerk will record the vote. (Applause.)

5 THE CHAIRMAN: The vote in the affirmative
6 being 68, the vote in the negative being 68, the motion
7 fails.

8 For what purpose does Delegate Gallagher rise?

9 DELEGATE GALLAGHER: Is it now in order to move
10 a reconsideration of the vote by which the amendment pre-
11 vailed?

12 THE CHAIRMAN: The question that the Chair is
13 uncertain of is not whether you can move a reconsideration.
14 I think you can.

15 The question is whether you must first move a
16 reconsideration of the vote just taken, the 68 to 68 vote;
17 and I would like to have a moment or two to consider.

18 The Chair is ready to announce its ruling.
19 A motion to reconsider would be in order, provided the
20 motion couples in one motion a reconsideration of the
21 vote by which the committee recommendation just failed
 and reconsideration of the vote by which that recommendation

1 was amended. They would be put as one vote, but
2 the two would have to be combined.

3 Do you so move?

4 DELEGATE GALLAGHER: I so move.

5 THE CHAIRMAN: Is there a second to the motion?

6 (Whereupon, the motion was seconded.)

7 THE CHAIRMAN: Delegate Dukes.

8 DELEGATE DUKES: What is the effect of the new
9 vote?

10 THE CHAIRMAN: If the vote is in favor of the
11 reconsideration, we go back to the amendment and reconsider
12 that as the first matter, whether the amendment should be
13 made, and then, depending upon what action was taken on
14 that amendment, we would proceed further.

15 Does that answer your inquiry?

16 DELEGATE DUKES: Yes.

17 THE CHAIRMAN: Delegate Wheatley.

18 DELEGATE WHEATLEY: In the event this motion
19 to reconsider is defeated, am I correct in assuming that
20 there would be under the present committee report no recom-
21 mendation in this area?

1 THE CHAIRMAN: That is correct.

2 DELEGATE DUKES: And if the recommendation
3 passes, the move to reconsider, we would be open to recon-
4 sider the earlier votes?

5 THE CHAIRMAN: That is right. But the first
6 vote to be reconsidered would be the adoption of the amend-
7 ment.

8 DELEGATE DUKES: Thank you.

9 THE CHAIRMAN: Is there any discussion of the
10 motion to reconsider? Are you ready for the question?

11 Delegate Burgess.

12 DELEGATE BURGESS: May we have a quorum call
13 at this time, sir?

14 THE CHAIRMAN: The Clerk will ring the quorum
15 bell.

16 DELEGATE JAMES: Mr. Chairman.

17 THE CHAIRMAN: Delegate James.

18 DELEGATE JAMES: I don't have the slightest
19 idea what a vote Yes or a vote No will mean in this
20 situation. Could you explain it in simple terms --

21 THE CHAIRMAN: I shall try to.

1 DELEGATE JAMES: -- from the standpoint of
2 those who would like to have a Board of Public Works in
3 the Constitution and those who are against it. Then we will
4 be in a position to dispose of it.

5 THE CHAIRMAN: The Chair will endeavor to explain
6 the situation as he understands it.

7 A vote Aye is a vote in favor of reconsidering
8 the tie vote by which the recommendation -- by which the
9 motion to approve the recommendation failed, and to recon-
10 sider the vote by which the recommendation was amended to
11 strike the word "not".

12 If that motion prevails, namely, if a majority
13 vote in favor of the motion to reconsider, we will be pre-
14 cisely where we were before any of the votes were taken.
15 We will then have before us the Committee Recommendation.
16 The Chair will put to you the question of whether
17 the committee recommendation shall be made -- I mean the
18 amendment; I am sorry.

19 The question then before you would be the
20 amendment. The Chair will put to you the question of
21 whether the amendment should be made.

1 The procedure thereafter would be exactly the
2 same as it has been the past ten minutes or so.

3 For what purpose does Delegate White rise?

4 DELEGATE WHITE: Mr. Chairman, as the situation
5 now stands, by tie of vote, if we fail to reconsider
6 actually the Constitution as of this moment will make no
7 mention of this agency, is that right?

8 THE CHAIRMAN: That is not entirely correct.

9 Let the Chair again state what he understands
10 the situation to be as a result of the last vote.

11 As a result of the last vote, the committee
12 recommendation as amended, namely, the recommendation that
13 the Board of Public Works be provided for in the
14 Constitution, is neither approved or disapproved; there-
15 fore there has been no action of the Committee of the Whole
16 on that question. There is no recommendation that a Board
17 be provided for in the Constitution, no recommendation
18 that a Board not be provided for in the Constitution.
19 Therefore, on a consideration of Committee Recommendation
20 EB-1, the blue paper, it would be in order for anyone to
21 submit an amendment providing for a Board of Public Works.

1 If such an amendment is not offered or if such
2 an amendment is offered and rejected, there would be no
3 Board of Public Works provided for in the Constitution.

4 If such an amendment is offered and the amend-
5 ment is approved, then obviously there would be a Board of
6 Public Works provided for in the Constitution.

7 Delegate Gallagher.

8 DELEGATE GALLAGHER: Mr. Chairman, a point of
9 parliamentary inquiry:

10 If the motion to reconsider fails, is it not
11 correct that the matter is once and for all and forever dis-
12 posed of?

13 THE CHAIRMAN: I don't think that is accurate.
14 It is too general a statement. In the first place, in
15 the Committee of the Whole -- the Chair doesn't think you
16 are limited to one motion to reconsider in the Committee
17 of the Whole, but entirely apart from that, this is
18 only a Committee of the Whole, and this is not binding on
19 the Convention.

20 In other words, this motion is not what is
21 commonly called a clincher.

1 The parliamentarian suggests I ought to amplify
2 my previous statement to make it abundantly clear that the
3 effect of the last action is to leave no committee recom-
4 mendation approved by the Committee of the Whole, and the
5 effect of no recommendation is to leave the matter open
6 for any pertinent amendments.

7 There is no positive recommendation, so the
8 matter is open for any pertinent recommendations. A posi-
9 tive recommendation one way or the other would, of course,
10 be controlling to the extent the Chair indicated previously.

11 Delegate Case.

12 DELEGATE CASE: Mr. Chairman, another pos-
13 sibility occurred to me, and I wonder if we can have a
14 ruling on it. It is this:

15 Suppose the motion for reconsideration wins
16 and the matter is then open for reconsideration, and then
17 a tie vote is had --

18 THE CHAIRMAN: On which? On the amendment?

19 DELEGATE CASE: Yes.

20 Then do I take it that the amendment would fail
21 and the proponents of the Board of Public Works would then
be precluded from offering an amendment

1 when the recommendations come up at a later time.

2 THE CHAIRMAN: Assuming that the Committee of
3 the Whole takes the next step and approves the Committee
4 recommendation that is stated in 1; in other words, you
5 would not stop with the amendment. You would have to
6 take the next step. You said if the vote was tie on the
7 amendment, the amendment would fail.

8 The Chair would then have to put the committee
9 recommendation, and depending upon the action on the
10 committee recommendation --

11 DELEGATE CASE: If that passed, then your ori-
12 ginal ruling would be reinstated; namely, that when the
13 blue paper comes up before us, we could not offer at that
14 time an appropriate amendment to reconstitute a constitu-
15 tional Board of Public Works?

16 THE CHAIRMAN: I think that would be true,
17 assuming it would be considered at the Convention
18 after the Committee of the Whole reported this recommenda-
19 tion.

20 Delegate White.

21 DELEGATE WHITE: I would like to ask the Chairman

1 a question, the Chairman of the Committee.

2 THE CHAIRMAN: Pertaining to the motion for
3 reconsideration?

4 DELEGATE WHITE: Yes.

5 THE CHAIRMAN: Delegate Morgan, would you
6 yield to a question?

7 DELEGATE MORGAN: I yield.

8 THE CHAIRMAN: Delegate White.

9 DELEGATE WHITE: Delegate Morgan, I supported
10 your point of view last time. I wonder what you are going
11 to do now. (Laughter.)

12 THE CHAIRMAN: Delegate Morgan.

13 DELEGATE MORGAN: I am going to vote for the
14 motion for reconsideration because I would like to get
15 this question settled one way or the other.

16 THE CHAIRMAN: Delegate White.

17 DELEGATE WHITE: Thank you very much. Now I
18 know what to do.

19 THE CHAIRMAN: Delegate Della.

20 DELEGATE DELLA: Mr. Chairman, I have a parlia-
21 mentary inquiry.

1 THE CHAIRMAN: State the inquiry.

2 DELEGATE DELLA: What is it proper to ask for
3 verification of the last roll call?

4 THE CHAIRMAN: I am not sure the Chair under-
5 stands what you mean by "verification". You mean
6 a copy of the roll call?

7 DELEGATE DELLA: No; a new roll call.

8 THE CHAIRMAN: A what?

9 DELEGATE DELLA: Anew roll call of the member-
10 ship.

11 THE CHAIRMAN: A quorum call? I am not sure
12 I understand your inquiry.

13 DELEGATE DELLA: Under the Jeffersonian Rules
14 and under Robert's Rules of Order on parliamentary
15 procedure, it is always in order to ask for verification
16 of the last roll call. I am wondering about the Eney Rules.

17 THE CHAIRMAN: The Chair does not believe that
18 such a request is in order, in view of the fact that the
19 vote was taken on the roll call on a vertification of the
20 vote. A delegate could not change his vote. It could
21 not change the result.

1 The result was indicated on the Board, and
2 every delegate either has or will have a copy; and there
3 would, therefore, be no purpose served in verification.
4 The situation would be different if you took a vote orally.

5 DELEGATE DELLA: Will you give me where that
6 rule is?

7 THE CHAIRMAN: If you mean will I quote you
8 the rule, I will ask the parliamentarian if he can find
9 it while we proceed to a discussion of the motion to re-
10 consider.

11 Delegate Mason.

12 DELEGATE MASON: Mr. Chairman, I would like
13 to direct a question to Delegate Dorsey.

14 THE CHAIRMAN: Delegate Dorsey, do you yield
15 for a question?

16 DELEGATE DORSEY: Yes.

17 THE CHAIRMAN: Delegate Mason.

18 DELEGATE MASON: Delegate Dorsey, you heard
19 the question directed to Delegate Morgan by Delegate White,
20 and Delegate Morgan answered that if he were voting for him,
21 he would vote for reconsideration.

1 Now, I ask you what would you instruct the
2 people who were voting for your position? Would you
3 tell them to vote against reconsideration?

4 DELEGATE DORSEY: I am so confused by the
5 ruling of the Chair -- I have served in this House as a
6 member of the legislature for eight years, four years across
7 the hall in the Senate, and I have never in my lifetime
8 heard such a ruling as the Chair just made.

9 THE CHAIRMAN: Delegate Mason, do you
10 have any further inquiry? (Laughter.)

11 Delegate Dorsey.

12 DELEGATE DORSEY: I never heard of a legislative
13 body -- and certainly this is one, because we are not
14 only legislating for today, but we are legislating for
15 generations -- where a tie vote couldn't be reconsidered.

16 THE CHAIRMAN: That is what is pending.

17 DELEGATE DORSEY: Well, I ask that a verification
18 be taken of it first, at which time any member is privileged
19 to change his vote. I refer you to Robert's Rules of
20 Order.

21 THE CHAIRMAN: Do you have a paragraph that you

1 can refer us to, and maybe save us time?

2 DELEGATE DORSEY: I don't even have the book
3 here. (Laughter.)

4 THE CHAIRMAN: Delegate Mason.

5 DELEGATE MASON: As I understand Delegate
6 Dorsey's answer, I presume he would suggest that those who
7 are voting for a Board of Public Works not vote for recon-
8 sideration?

9 THE CHAIRMAN: Delegate Dorsey.

10 DELEGATE DORSEY: No, sir, I would not. I can
11 simply say I am so confused that I do not have any advice,
12 Delegate Mason, and I am confused by the ruling of the
13 Chair here.

14 THE CHAIRMAN: Delegate Adkins.

15 DELEGATE ADKINS: I suggest the confusion
16 is not limited to Delegate Dorsey's confusion.

17 I would like to make a parliamentary inquiry
18 and then follow it with a motion.

19 Am I correct in assuming if the Committee
20 rises for a dinner recess that the pending motion to recon-
21 sider will still be the pending order of business before

1 the House?

2 THE CHAIRMAN: It will be, under the practices
3 we have been following.

4 DELEGATE ADKINS: Am I in order to make a
5 motion to rise until such time as the Committee on Calendar
6 and Agenda so order?

7 THE CHAIRMAN: Is there a second to the motion?

8 (Whereupon, the motion was seconded.)

9 THE CHAIRMAN: What time do you suggest is the
10 hour to be included in the pending motion?

11 DELEGATE POWERS: It is 6:10. 7:30.

12 THE CHAIRMAN: Delegate Adkins, you have heard
13 the suggestion of the Chairman of Calendar and Agenda.
14 Would you want to amend your motion to be specific?

15 DELEGATE ADKINS: Yes, sir.

16 This time I will suggest that the Committee
17 rise until 6:30.

18 THE CHAIRMAN: You said 6:30.

19 DELEGATE ADKINS: I thought he said 6:30.

20 THE CHAIRMAN: He said 7:30.

21 DELEGATE ADKINS: I agree with him.

1 DELEGATE JAMES: I would like to amend the
2 motion and make it 8:00.

3 (Whereupon, the motion was seconded.)

4 THE CHAIRMAN: I think the Chair has misled
5 all of you, because the time as of which this Committee
6 reconvenes is up to the Convention and not the Committee.

7 The only thing in order is a motion to rise,
8 and then the time will be fixed by the Convention.

9 Delegate Sherbow.

10 DELEGATE SHERBOW: I rise on a matter of per-
11 sonal privilege. I note this motion is not debatable.
12 I do not intend to debate it, but I could not leave this
13 hall without saying this, that the statement I made in the
14 debate quoting Governor Agnew is a literal quotation from
15 the address that he delivered before this Constitutional
16 Convention at the State House, Annapolis, Maryland, September
17 29, 1967, at 2:00 p.m.

18 As you will find on page 4 in the fourth para-
19 graph thereof, it is a literal quotation and not in any
20 way -- I know nothing of what took place before the com-
21 mittee.

1 I do think the public record ought to show
2 that. (Applause.)

3 THE CHAIRMAN: The question arises on a motion
4 that the Committee rise. A vote Aye is a vote in favor
5 of the motion; a vote No is a vote against.

6 All in favor, signify by saying Aye; contrary,
7 No.

8 The Ayes have it. The motion is carried.

9 (The mace was replaced by the Sergeant at Arms.)

10 (Whereupon, at 6:12 p.m., the Committee of the
11 Whole Rose, and the Convention reconvened.)

12 THE PRESIDENT: The Convention will please
13 come to order.

14 On behalf of the Committee of the Whole the
15 Chair reports that the Committee of the Whole has had
16 under consideration Committee Recommendation GP-4, and
17 that it has approved the Committee Recommendation. The
18 Report of the Committee of the Whole and the Committee
19 Recommendation is referred to the Committee on Style, Draft-
20 ing and Arrangement.

21 On behalf of the Committee of the Whole, the

1 Chair reports the Committee has under consideration
2 Committee Report EB-1, that it still has it under con-
3 sideration, and it desires leave to consider it again.

4 Are there any announcements which must be made
5 before the dinner hour?

6 If not, the Chair recognizes Delegate Powers.

7 DELEGATE POWERS: I move we recess until
8 7:45 p.m. (Applause.)

9 THE PRESIDENT: Before I put the motion, will
10 any delegates present now who were not present in an earlier
11 roll call indicate their presence on the supplemental roll
12 call?

13 The Clerk will record the supplemental roll
14 call.

15 Is there a second to the motion made by Delegate
16 Powers?

17 (Whereupon, the motion was seconded.)

18 THE PRESIDENT: It has been regularly moved
19 and seconded that the Convention recess until 7:45 p.m.
20 this evening.

21 Is there any discussion?

1 (There was no response.)

2 THE CHAIRMAN: All in favor, signify by saying
3 Aye; contrary, No.

4 The Ayes have it. It is so ordered.

5 (Whereupon, at 6:15 p.m., the Convention was
6 adjourned, to reconvene at 7:45 p.m. of the same night.)
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3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
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10 Chamber of the House of Delegates
11 State Capitol
12 Annapolis, Maryland
13 November 27, 1967 - 7:45 p.m.
14
15 -----
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17 HONORABLE H. VERNON ENEY,
18 PRESIDENT
19

20 Reported by:
21 C. J. Hunt
and
D. Fitzgerald

1 THE PRESIDENT: The Sergeant at Arms will clear
2 the aisles and close the doors.

3 The Convention will please come to order.

4 Delegates will please take their seats.

5 Roll call.

6 (Whereupon, the roll call was taken.)

7 Have all delegates answered roll call?

8 The Clerk will record the roll call.

9 There being a quorum present, the Convention
10 is in session.

11 It gives me a great deal of pleasure to recog-
12 nize the presence in the gallery of Dr. Herbert Longenecker,
13 President of Tulane University and Chairman of the Academic
14 Advisory Board of the United States Naval Academy. De-
15 lighted to have him with us. (Applause.)

16 The Chair recognizes Delegate Powers, Chairman
17 of the Committee on Calendar and Agenda.

18 DELEGATE POWERS: Mr. President, I move the
19 Convention resolve itself into the Committee of the Whole.
20 Prior to that, however, I would like to move that the first
21 item on the agenda is the matter now under consideration;

1 that is, the Committee Report of the Executive Branch
2 be made a special order for the next meeting of the Com-
3 mittee of the Whole after tonight.

4 THE PRESIDENT: Is there a second?

5 (Whereupon, the motion was seconded.)

6 It is regularly moved and seconded that
7 Recommendation No. 1 of Committee Report EB-1 be made a
8 special order of business at the first sitting of the Com-
9 mittee of the Whole after this evening's sitting. Is
10 there any discussion?

11 (There was no response.)

12 Are you ready for the question? Delegate Sherbow.

13 DELEGATE SHERBOW: May I ask why, so we will
14 at least be informed?

15 THE PRESIDENT: Delegate Powers. Did you hear
16 the inquiry?

17 DELEGATE POWERS: I am sorry.

18 THE PRESIDENT: Delegate Sherbow would like an
19 explanation as to the reason for your motion. Delegate
20 Powers.

21 DELEGATE POWERS: Mr. President, the reason is

1 that a number of delegates have expressed the opinion that
2 they would rather consider this very close question of
3 the Board of Public Works after there had been a deter-
4 mination of the other issues involved in this Committee
5 Report.

6 THE PRESIDENT: Any further question, Delegate
7 Sherbow?

8 DELEGATE SHERBOW: No.

9 THE PRESIDENT: Delegate Churchill Murray.

10 DELEGATE C. MURRAY: Mr. Chairman, I don't know
11 whether this has to be in the form of a question, but prior
12 to leaving here just before dinner, a delegate who is very,
13 very much interested in one side of this asked if I would,
14 and others, agree to a postponement until tomorrow morning,
15 saying that some of the delegates would not be here tonight.

16 Now, is this a bona fide effort, or is it a
17 maneuver to strengthen one side or the other?

18 THE PRESIDENT: To whom is your question ad-
19 dressed?

20 DELEGATE C. MURRAY: I see Delegate Powers stand-
21 ing. Perhaps it should be addressed to him.

1 THE PRESIDENT: Delegate Powers.

2 DELEGATE POWERS: I will be glad to attempt
3 an answer on it for Delegate Murray, and that is, I don't
4 know which side would be benefitted by it, and I don't
5 know the effect of this except for the fact that there are
6 some inquiries; and it is the intention that we would go
7 on with the other items involved on this same Report so
8 that it would not be a matter of delaying the entire pro-
9 ceeding, but only the consideration of the question of
10 the report of Public Works.

11 THE PRESIDENT: The Chair would like to amplify
12 that reply to this extent: A number of delegates spoke
13 to the Chair during the dinner hour recess to ask whether
14 or not the Debate Schedule could be amended so that this
15 question could be deferred. Two reasons were advanced;
16 one, that some delegates were attending the Morgan State
17 College Centennial banquet tonight and would not be here;
18 secondly, that many delegates felt that they would be able
19 to vote more intelligently on the first recommendation
20 after there had been action on the second, third and
21 fourth recommendations.

1 The Chair advised them that the matter was en-
2 tirely up to the Convention; that a motion to make it the
3 special order of business would be in order, and it would
4 be up to the Convention to decide whether it wanted to
5 postpone consideration of the matter until tomorrow morn-
6 ing.

7 I think the Chair should announce that if the
8 motion is carried, and this particular matter, consider-
9 ation of this particular matter is postponed, it will,
10 when it comes on for further discussion at the meeting of
11 the Committee of the Whole tomorrow, be in the same status
12 it is now. It will be before the Assembly -- the motion
13 to reconsider the vote by which the recommendation failed
14 after approval and the motion to reconsider the vote by
15 which it was amended.

16 I think while the Chair is speaking to this
17 point it may be worthwhile, if I may, and before you vote
18 on the question, so that everyone will be fully informed,
19 to amplify what was said before recess as to the rulings
20 of the Chair.

21 The Parliamentarian and the Chair have spent a

1 good portion of the dinner recess hour in checking the
2 rulings of the Chair prior to recess. As a result of that
3 checking, the Chair is disposed to adhere to its previous
4 rulings, because it believes they were correct. Jeffer-
5 son's Manual contains no reference to a verification of the
6 vote. Neither does Roberts Rules of Order. Roberts Rules
7 of Order contains one provision in a footnote, suggesting that
8 a secretary should be instructed to retain paper ballots
9 so that if a recount is ordered by a majority of the
10 Assembly, it would be available.

11 These references clearly indicate that it
12 would not be possible to change a vote on such a verifica-
13 tion.

14 The Senate Manual, the Senate of the United
15 States Manual refers to recapitulation by which it obviously
16 means the same thing that we have been saying by the term
17 "verification", as does also Cannon's Rules for the House
18 of Representatives. Both state quite unequivocally that
19 it is not possible on such a recapitulation to change the
20 vote. However, the Chair feels the matter is set beyond
21 any doubt at all by the Rules of this Convention which

1 state quite clearly that a delegate may change his vote
2 at any time before it is recorded and clearly indicates
3 that a vote may not be changed after it is recorded.

4 One further matter that I want to mention in
5 that connection, and that is that reviewing the Rules of
6 the House of Delegates of Maryland and of the Senate of
7 Maryland, we were unable to find any reference to a veri-
8 fication or a recount of the vote.

9 Now, as to the status of the matter under
10 consideration: There was no request for verification of
11 the vote prior to the time another vote was ordered. Quite
12 obviously, if a delegate observing his vote recorded on the
13 electronic roll call vote takes the Floor and says that the
14 machine has improperly recorded his vote, the record can
15 be corrected. I think the record can be corrected at any
16 time upon a proper request therefor by a delegate who says
17 his vote is improperly recorded.

18 In addition to that, in this particular situation,
19 the motion to reconsider the vote was before the House
20 and was pending, and I do not think it could be delayed
21 by a verification of a prior vote. However, such a

1 verification would serve no useful purpose because the
2 vote by which the motion to reconsider the earlier vote would
3 accomplish everything that could possibly be accomplished
4 by any verification under the procedures laid down by the
5 Rules of this Assembly.

6 As the matter under consideration is somewhat
7 confused, I think the Chair should state again, so that
8 there will be no misconceptions at all as to the status of
9 the matter, regardless of the outcome on the vote, you
10 have a Committee Report, not a committee recommendation.
11 There is a difference under the Rules. The Report is a
12 report as to what shall not be in the Constitution, as
13 distinguished from a report as to what shall be in the
14 Constitution.

15 If the Report makes a recommendation that some-
16 thing not be in the Constitution, and it is approved so
17 that the Committee of the Whole has affirmatively decided
18 that a certain matter shall not be in the Constitution, I
19 think it would not be in order at a subsequent sitting of
20 the Committee of the Whole on consideration of the Committee
21 Recommendation for the Executive Branch to consider an

1 amendment to that Article, which would be contrary to the
2 action taken by the Committee of the Whole in approving
3 a report as to what should not be in the Constitution.

4 On the other hand, if the Report was inconclu-
5 sive, as it was on a tie vote, it means that you had no
6 recommendation whatsoever. In that situation, quite obvious-
7 ly, an amendment to include a provision in the Constitution
8 with respect to the Board of Public Works at the time the
9 Committee Recommendation was under consideration, would
10 obviously be in order.

11 Similarly, if the action of the Committee of the
12 Whole was to approve a recommendation that the Constitution
13 contain a provision with respect to the Board of Public
14 Works, such an amendment would be in order to be considered,
15 but since there is no way by which the Committee of the
16 Whole can enforce its ruling with respect to such a recom-
17 mendation, namely, that the Constitution contain a pro-
18 vision, the net effect of these latter two recommendations
19 would be about the same. In other words, if the Committee
20 approved a recommendation that the Constitution contain a
21 provision for the Board of Public Works, or if the Committee

1 of the Whole failed either to approve or disapprove such
2 a recommendation, the net effect would be the same: Namely,
3 an amendment to put a Board of Public Works in the Consti-
4 tution would be in order in either event, so that you
5 would have, of the three possible actions on Committee
6 Recommendation 1, only the first action; that is, an
7 approval of a report that the Constitution not contain a
8 provision with respect to the Board of Public Works. Only
9 that action would prevent consideration of such a matter
10 as an amendment of the Committee Recommendation.

11 Is there any question as to the effect of the
12 amendment? Delegate Schneider.

13 DELEGATE SCHNEIDER: Mr. Chairman, may I ask a
14 question with respect to the motion that is now on the Floor,
15 which will go to the matter of what you have just been dis-
16 cussing?

17 THE PRESIDENT: State the question.

18 DELEGATE SCHNEIDER: If we were to defeat the
19 motion of the Calendar and Agenda, a committee to postpone
20 consideration of the motion to reconsider, then consider
21 the motion to reconsider and defeat that motion, would

1 we not have in effect a postponement of consideration of
2 the matter of whether the Board of Public Works should or
3 should not be in the Constitution in the way that we, in
4 the sense that we would defer consideration of that until
5 the Committee Recommendation which is the blue sheet, comes
6 on the Floor and then the proponents of the Board of Public
7 Works could offer their amendments there.

8 THE PRESIDENT: That would be the effect of it,
9 I think.

10 Is there any further question? Delegate Wheat-
11 ley?

12 DELEGATE WHEATLEY: Mr. Chairman, a further
13 parliamentary inquiry to your recent statement: If the
14 Committee -- it is rather, I think, unusual we are taking
15 this by report instead of recommendation; and I discussed
16 this with the Chairman -- however, it distresses me some-
17 what that if the Committee Recommendation as to not
18 including, as I understand your interpretation, is adopted
19 it would not then be open to amendment when the recommend-
20 ation is before us; is that correct?

21 THE PRESIDENT: If the Committee Recommendation

1 that something not be included in the Constitution is
2 approved by the Committee of the Whole, it would not be in
3 order for the Committee of the Whole at a later sitting to
4 consider an amendment to the Executive Article which would
5 be contrary to that action.

6 DELEGATE WHEATLEY: To follow this further, if
7 the Committee Recommendation is not accepted, and is
8 amended, as it had been, then the question would then arise
9 later upon the recommendation as to the language for inclu-
10 sion of that question; is that correct?

11 THE PRESIDENT: That is correct.

12 DELEGATE WHEATLEY: So that in effect we are
13 giving one consideration to the Majority Report, and we
14 are requiring the Minority to raise that question twice
15 and be successful in their efforts; is that correct?

16 THE PRESIDENT: This could be stated to have
17 that effect. This would mean that what you are saying, as
18 the Chair understands it, is that if the present vote has
19 the effect of approving a recommendation that something
20 not be in the Constitution, that is an end of the matter;
21 but if the vote is the other way, it is not an end of the

1 matter; that is correct.

2 DELEGATE WHEATLEY: Further on this same ques-
3 tion, would the same procedure be involved for each of
4 the questions that have been presented by the Committee
5 Report?

6 THE PRESIDENT: I didn't catch what you said.

7 DELEGATE WHEATLEY: Would the same procedure
8 be followed as to the other, not, recommendations as to
9 Treasurer, Comptroller, et cetera, in the Committee Report,
10 that same procedure would prevail?

11 THE PRESIDENT: That is correct.

12 DELEGATE WHEATLEY: Thank you, Mr. Chairman.

13 THE PRESIDENT: Delegate Sherbow.

14 DELEGATE SHERBOW: Is the motion to set the
15 Calendar debatable?

16 THE PRESIDENT: I think so.

17 DELEGATE SHERBOW: Mr. Chairman, members of
18 the Committee, I know of no matter before this Committee
19 that is at this moment as divisive as this one. I know
20 of no matter that is as important. I do not think that we
21 ought to act on a matter of such grave importance while

1 there is this state of confusion; and therefore I favor
2 allowing this aspect of the matter, namely, the Board of
3 Public Works, to go over and be made a special order of
4 business for tomorrow or whatever time at which it will
5 come up. I agree with the Chairman.

6 THE PRESIDENT: Is there any further discussion?
7 Delegate Rybczynski.

8 DELEGATE RYBCZYNSKI: Mr. President, I have
9 asked any number of people during the hour and a half
10 break this question, and no one seemed to know the exact
11 answer, and I am sure that you can help us all.

12 When we voted to amend by 68 to 66, at that
13 juncture, we then had the word "not" stricken from the
14 Majority Report. Is that agreed?

15 THE PRESIDENT: That is correct.

16 DELEGATE RYBCZYNSKI: Now, my question is, what
17 was the second vote on it?

18 THE PRESIDENT: The second vote was on the
19 adoption of the Committee Recommendation as amended. The
20 first vote was on the motion to amend the Committee Recom-
21 mendation. Delegate Rybczynski.

1 DELEGATE RYBCZYNSKI: Mr. President, isn't it
2 true that as we have been working on the blue sheets,
3 section by section, first of all, we voted to amend. As
4 soon as we amended, or did not amend, we moved on to the
5 next amendment, or the next Minority Report, and then
6 finally, after all the amendments were in, you then asked
7 for a vote on the total recommendation. I believe this has
8 happened.

9 THE PRESIDENT: This is correct.

10 DELEGATE RYBCZYNSKI: Very frankly, I think a
11 lot of us were confused because the very next section
12 talks about eliminating the Comptroller's office, eliminat-
13 ing the Treasurer's office, the Attorney General's office;
14 and I honestly believe that very possibly a lot of people
15 were voting, thinking that they were to approve or dis-
16 approve the entire EB-1 rather than just that first sentence,
17 and I sort of gathered this was sort of confirmed by my
18 discussions with the various people through dinnertime.

19 THE PRESIDENT: The Chair regrets if that was
20 the case. I tried to state very clearly that the vote was
21 on the adoption of Committee Recommendation 1.

1 I agree with you that the procedure on the
2 Committee Report differs from that of the Committee Recom-
3 mendation, and there could have been this confusion. So
4 that there will be no confusion, the Chair has indicated,
5 and intends to take up each of the different recommend-
6 ations as indicated on the Debate Schedule, disposing of
7 each of them in order.

8 Delegate Mason.

9 DELEGATE MASON: Mr. Chairman, pursuing the
10 question asked by Delegate Rybczynski, I would like for
11 you to explain why, after this Committee voted to strike
12 out the word "not", that they had to then vote on the
13 motion to amend, that we haven't been following that pro-
14 cedure in the other amendments.

15 THE PRESIDENT: We have been following that
16 procedure as to committee reports; not as to committee
17 recommendations. Committee recommendations embrace in
18 each instance one Article or part of an Article of related
19 sections. They are quite different from these series of
20 recommendations which are, as the Chair interpreted them,
21 and as I believe the Committee on Calendar did in preparing

1 the Debate Schedule, separate recommendations, each of
2 which can stand or fall alone, and the Chair had under-
3 stood and understood this in the discussion with the
4 Minority representatives at the time when the Debate
5 Schedule was prepared, that each of these five recommend-
6 ations would be submitted in order. The Chair did not
7 anticipate that there would be any amendments offered to
8 any of them, had not been advised of any. Delegate Mason.

9 DELEGATE MASON: I think it was the opinion of
10 the Minority that when we took a vote on the motion to
11 strike, that would be the end of it.

12 THE PRESIDENT: The Chair very clearly stated
13 in presenting that motion that there would be a vote first
14 on the motion to amend, and if it carried that the Chair
15 would then submit the recommendation. The Chair stated
16 further at that time that if the motion to amend failed, the
17 recommendation would be submitted to a vote in the form
18 submitted by the Committee. There was no objection at
19 that time from any delegate to that procedure.

20 Delegate Johnson.

21 DELEGATE JOHNSON: Mr. President, I believe that

1 you commented upon this, but I was confused at that time,
2 and I am confused now.

3 Wouldn't it be in order, Mr. President, to call
4 for a reconsideration of the vote of the Committee of the
5 Whole on EB-1 as amended, without getting back to the
6 amendment to the Committee Report EB-1?

7 THE PRESIDENT: I am not sure I understood your
8 question. Would you state that again? Would it be in
9 order to move to reconsider what?

10 DELEGATE JOHNSON: The question is, Mr. Presi-
11 dent, could we not move for reconsideration of the action
12 of the Committee of the Whole on EB-1 as amended, namely,
13 the 68 to 68 vote, without going all the way back to the
14 previous vote, that is, the original Amendment No. 1 to
15 Committee Report EB-1?

16 THE PRESIDENT: Yes, indeed, if that was the
17 motion, but that was not the motion. The motion was to re-
18 consider the vote by which the amendment was adopted, and
19 the Chair ruled that in order to do that, that the motion
20 would have to embrace both votes. The mover of the motion
21 obviously did not desire to submit a motion in the form

1 suggested by you. It would have been in order. Is there
2 a further question, Delegate Johnson?

3 DELEGATE JOHNSON: Yes, Mr. Chairman, Mr. Presi-
4 dent, so do I take it that if we pass this particular
5 motion, I believe the motion by Delegate Gallagher, that
6 the motion that I propose would be in order subsequent, or
7 for that matter it is in order now if it is withdrawn?

8 THE PRESIDENT: I don't think it is in order
9 now in view of the pending motion. It certainly would be
10 if the pending motion were not adopted.

11 Let the Chair make this perfectly clear: The
12 control of the Debate Schedule, and the order in which
13 matters are considered by the Convention or by the Com-
14 mittee of the Whole, is in the control of this Convention.
15 It is not in the control of the Chair nor of the Chairman
16 of the Committee on Calendar and Agenda.

17 In order to facilitate the work of the Conven-
18 tion, the Chairman of the Committee on Calendar and
19 Agenda, and the Chair, the President of the Convention,
20 do work out a schedule in advance to carry on the debates
21 in accordance with what seems to them to be the best pro-

1 cedure, and as all of you know, these debate schedules
2 are worked out only after a conference with committee chair-
3 men and Minority spokesmen.

4 If the Convention at any time desires to change
5 the procedure, amend the Debate Schedule, then within the
6 limits fixed by the Rules, it has every right to do so.
7 I am trying merely to state to you as clearly as I can the
8 understanding that the Chair has as to the procedure on
9 this Committee Report, and as to the effect of the Debate
10 Schedule upon it. The pending motion is a motion that
11 further consideration of Recommendation 1 of Committee
12 Report EB-1 be made the special order of business at the
13 next sitting of the Committee of the Whole after this
14 evening.

15 Delegate Malkus.

16 DELEGATE MALKUS: Mr. President, I rise upon a
17 point of inquiry.

18 THE PRESIDENT: State the inquiry.

19 DELEGATE MALKUS: In my absence this afternoon,
20 I understand there was a vote of 68 to 68 on a matter of
21 whether or not there should be written in the Constitution

1 of Maryland a Board of Public Works.

2 My question is, is my observation correct?

3 THE PRESIDENT: That is correct..

4 DELEGATE MALKUS: If we do nothing, Mr. Presi-
5 dent, where do we stand?

6 THE PRESIDENT: The Chair doesn't understand
7 your inquiry, if we do nothing as to what?

8 DELEGATE MALKUS: I mean if the matter now dies
9 as it is, and it is dead, 69 to 67, or whatever the vote
10 might be on the question of abolition of the Board of
11 Public Works, if we do nothing on it, where do we stand?

12 THE PRESIDENT: As the Chair has indicated,
13 if the final action of the Committee of the Whole is
14 neither to approve nor to disapprove the Committee Recom-
15 mendation as it stands or as it is amended, the whole
16 subject will be open to the Committee of the Whole on
17 Amendment to Committee Recommendation EB-1. Delegate
18 Malkus.

19 DELEGATE MALKUS: Can you hear me now?

20 THE PRESIDENT: Yes, I can hear you.

21 DELEGATE MALKUS: Would we at that time -- when

1 would that time occur?

2 THE PRESIDENT: Just as soon as we can get on
3 with the business and move to it. That is the next item
4 on the Agenda, after consideration of the Committee Report
5 now under consideration.

6 DELEGATE MALKUS: And at that time everybody
7 would have an opportunity to be heard, would they not?

8 THE PRESIDENT: Assuming that the action of the
9 Committee of the Whole was as indicated, that is correct.

10 DELEGATE MALKUS: You would have no objection
11 to all of us being heard, would you?

12 THE PRESIDENT: Not the slightest.

13 Is there any further discussion? Delegate
14 Hardwicke?

15 DELEGATE HARDWICKE: Mr. President, I submit
16 that we heard debate and discussion all afternoon on the
17 subject. It occurs to me that if we postpone this important
18 matter until tomorrow, the nature and the force of the
19 arguments would be lost; and we have a very limited time
20 schedule here and we have already involved half a day in
21 the matter. If we postpone it, that half day's discussion

1 would not be available to us at a later time. It seems
2 to me that we ought to go ahead with the thing and vote
3 it up or down this evening.

4 THE PRESIDENT: Is there any further discussion?
5 Are you ready for the question?

6 DELEGATE BEALL: Yes.

7 THE PRESIDENT: The question arises on the
8 motion that Recommendation No. 1 of Committee Report EB-1
9 be made a special order for the first sitting of the Com-
10 mittee of the Whole after this evening. A vote Aye is a
11 vote in favor of that motion. A vote No is a vote against.
12 Are you ready for the question? I think we had better
13 take a recorded vote. Cast your votes.

14 Has every delegate voted? Does any delegate
15 desire to change his vote? The Clerk will record the vote.

16 There being 77 votes in the affirmative and 54
17 in the negative, the motion is carried.

18 Delegate Burdette.

19 DELEGATE BURDETTE: May I make a parliamentary
20 inquiry, Mr. President?

21 THE PRESIDENT: State the inquiry.

1 DELEGATE BURDETTE: Is it the ruling of the
2 Chair that this special order of business is at the begin-
3 ning of the next sitting of the Committee of the Whole?

4 THE PRESIDENT: It is not. It will be at such
5 time in the next session of the Committee of the Whole as
6 is approved by the Convention, on recommendation of the
7 Committee on Calendar and Agenda. The Chair would antici-
8 pate that there may be a matter under consideration, and
9 the Committee on Calendar may therefore suggest a special
10 hour or it may suggest that it come up at a time when the
11 matter under consideration has been concluded. Delegate
12 Burdette.

13 DELEGATE BURDETTE: If I may pursue the parlia-
14 mentary inquiry, Mr. President, the problem of confusion
15 arises from the discussion of getting votes on a number of
16 other State officers out of the way first; but I do not know
17 whether that was a part of the motion.

18 THE PRESIDENT: It was not, but the Chair has
19 every confidence in the Committee on Calendar and Agenda,
20 and has no doubt that they will take that into consider-
21 ation in preparing the Agenda for tomorrow.

1 DELEGATE BURDETTE: Thank you.

2 THE PRESIDENT: Delegate Morgan. For what
3 purpose does the delegate rise?

4 DELEGATE MORGAN: Mr. Chairman, have we come
5 to Recommendation No. 2?

6 THE PRESIDENT: We have not. We are still in
7 Convention.

8 Delegate Barrick.

9 DELEGATE BARRICK: Mr. Chairman, I rise for a
10 personal privilege.

11 THE PRESIDENT: State the privilege.

12 DELEGATE BARRICK: Delegate Bard earlier in the
13 day told us how the Convention had interfered with his
14 wedding anniversary, and now he comes to us this evening in
15 formal clothes and apparently we are further interfering
16 with his social life, and I would just like to point out
17 the sacrifice that he is making. (Applause.)

18 THE PRESIDENT: Delegate Marion.

19 DELEGATE MARION: Mr. President, might I be
20 permitted a brief personal observation?

21 THE PRESIDENT: You may.

1 DELEGATE MARION: The debate and discussion
2 both immediately prior to the supper recess, as well as
3 some of the discussion and conversation since then,
4 remind me of a story I heard over the weekend of the young
5 boy who was asked in school by his teacher what his
6 favorite Christmas carol was; and he said that he had a
7 just favorite but he/couldn't remember the name of it, and the
8 teacher said, Well, do you know how the tune goes? He
9 thought a minute and said, No, he didn't remember how the
10 tune went. She said, Do you remember any of the words?
11 He thought for a minute, and he said, No, he couldn't
12 remember any of the words. With that the little boy next
13 to him said, You know, that is my favorite Christmas carol,
14 too.

15 THE PRESIDENT: Delegate Powers.

16 DELEGATE POWERS: Mr. President, I move the
17 Convention resolve itself into the Committee of the Whole
18 to resume consideration of Committee Report No. EB-1, sub-
19 ject to the amendment provided for the first item to be a
20 special order tomorrow.

21 THE PRESIDENT: Is the motion seconded?

1 (Whereupon, the motion was seconded.)

2 THE PRESIDENT: All in favor, signify by saying
3 Aye; contrary, No. The Ayes have it. It is so ordered.
4 The Committee of the Whole will please come to order.

5 (Whereupon, at 8:35 o'clock p.m., the Convention
6 resolved itself into the Committee of the Whole.)

7 (The mace was removed by the Sergeant at Arms.)

8 THE CHAIRMAN: Next item on the Agenda is con-
9 sideration of Recommendation No. 2. The Chair recognizes
10 Delegate Morgan, Chairman of the Committee, to present
11 the Committee's Report. Delegate Morgan.

12 DELEGATE MORGAN: Mr. Chairman, the Vice-Chairman
13 of the Committee, Delegate Adkins, is going to present the
14 Committee's Report on this.

15 THE CHAIRMAN: Delegate Adkins, will you come
16 to the reading desk, please? While Delegate Adkins is com-
17 ing to the reading desk, the Chairman will announce, so
18 that there will be no misunderstanding, since no one cared
19 to suggest a change in the Debate Schedule as interpreted
20 by the Chair prior to this session of the Committee of the
21 Whole, we will proceed to a consideration of Items 2, 3, 4

1 and 5 of the Committee Report seriatim, taking a vote on
2 each item after it has been debated. Delegate Adkins.

3 DELEGATE ADKINS: Mr. Chairman, ladies and
4 gentlemen, some twenty-five years ago when I made my
5 maiden appearance before the Court of Appeals, meeting in
6 the building immediately across the street, I approached the
7 rostrum there with much the same fear and trepidation as I
8 do here. One difference was that there I dropped my books
9 as I rose to speak. I became completely flustered and was
10 able for several seconds to say nothing. The late dis-
11 tinguished Chief Judge Bond, who will long be my favorite
12 and kindest person, looked down from his high place, said
13 in the quietus of attorneys, Counsellor, take your time,
14 the ferry for the Eastern Shore does not leave for another
15 hour.

16 It may very well be that before I finish here,
17 I shall have wished that that ferry were still running.

18 No question here before presented to this Consti-
19 tutional Convention is fraught with the brilliant omni-
20 presence of the current political scene as is the matter
21 now pending before this House. We of the Majority,

1 however, feel quite confident that this Convention will,
2 in its mature judgment, approach this question as it has
3 all others heretofore presented, and will judge it in
4 terms of what is best for the long range governance of this
5 State.

6 We are recommending to you that a long-time
7 elected office in the Constitution shall be eliminated as
8 a constitutional office, and we do so for reasons which
9 through thought and testimony we consider completely
10 valid reasons. I ask you to consider with me for a few
11 moments what those reasons are.

12 I do not need to tell this sophisticated and
13 distinguished group what the duties of the Comptroller are.
14 They are set forth currently in the Majority Report. They
15 are set forth in the Report of the Commission. All of you
16 have had sufficient experience with the government of
17 Maryland to know in essence that the functions of the Comp-
18 troller basically are to be the fiscal manager of the
19 State.

20 We are thus faced with a situation where we
21 have an Executive Department, one of the most, if not the

1 most critical areas of which is not responsive to the
2 elected representative at the top of the heap, to wit,
3 the Governor of this State.

4 We are thus faced with a Governor, or with an
5 Executive Department, headed by a Governor who is vested
6 with these general executive powers, and yet is deprived
7 of constitutional control over the general management of
8 the fiscal affairs of the State.

9 We need many reasons to make this recommendation.
10 We heard a great deal of testimony. We heard testimony
11 from many people who have been studying the problem of
12 strengthening of local government for many years. Without
13 exception, those people recommended that if Maryland is
14 to have a modern executive to meet the demanding problems
15 of urbanization and of the 20th Century, we must have an
16 increased power in the Chief Executive of this State.

17 We heard such testimony from the Council on
18 Economic Development, one of the most distinguished groups
19 of business leaders, professional leaders, academicians
20 in the country. We heard such testimony from the Council
21 on Intergovernmental Affairs, not a business group, not an

1 construct a strong, virile Legislative Department, perhaps
2 as strong as any in the country. We have increased their
3 powers substantially.

4 I say to you, if we now back away from the con-
5 struction of a strong Executive, the only thing we will
6 have done, we will have constructed a three-legged stool,
7 only two legs of which are of the same length.

8 Those decisions are behind us. This decision
9 is in front of us.

10 If we believe what people who are students of
11 this field tell us, we must believe that a strong Executive
12 is necessary.

13 Three chief arguments are advanced by the
14 Minority in their Report for the continuance of the status
15 quo. First, they talk about the elected Comptroller being
16 a watchdog for the Governor. There is some apparent inherent
17 belief that Maryland will for the future have corrupt high
18 public officials; that/it is necessary in order to protect
19 against this to provide somebody who can look over his
20 shoulder and see that he is constantly kept up to the mark.
21 They concede that all of Maryland's governors of the

1 immediate past to the present have been highly responsible
2 people. They also argue that the Comptrollers of the past,
3 by virtue of having an elective office within the Executive
4 Branch, and having substantial voice in the fiscal affairs
5 of the State, have created no problems to the exercise of
6 effective executive control, and it would seem logical to
7 say that if they have not created any effective problems,
8 then they have not in fact been effective watchdogs; and
9 if they have not been effective watchdogs, q.e.d., why do
10 we need them?

11 The question thus seems to me to be presented,
12 which is more likely for the future, that a corrupt governor
13 will escape detection by the legislature, the courts,
14 the president, the post-auditor which this body has created
15 or is it more likely that some future Comptroller will so
16 behave as to impede effective exercise of executive power?

17 We suggest that the question answers itself.

18 The second argument relates to the catch
19 phrase, checks and balances. This is a worthwhile phrase,
20 long ingrained in our political history, but like all catch
21 phrases unless it is used accurately, it can do more damage

1 than it can be helpful.

2 Somehow the Minority feels that the protection
3 of people rests with an executive which must be constantly
4 checked, and I suppose if this argument is carried to its
5 logical extreme one could say that effective government
6 action can only be in an area where there is a complete
7 check, and a complete balance, which can only lead to
8 stalemate.

9 The fact of the matter is that the most casual
10 reading to the political philosophy underlying our tri-
11 party system makes it perfectly clear that the principle
12 is intended to apply between branches, and not within
13 branches of the government.

14 If we undertake to construct a tri-party system,
15 as this Convention is now committed to do, strong in two
16 branches, divisive and weak in the third branch, the only
17 thing that we can expect from that is trouble for the future.

18 The third and final argument which they advance
19 in the Minority Report is that somehow, by eliminating an
20 elective office, we are diminishing, and here I use their
21 term, we are diminishing democracy, to the extent that

1 we eliminate an elective office.

2 Reference was made to this on the Floor of the
3 Convention in its debates this afternoon. The question,
4 I think, was quite properly posed, if we are here diminish-
5 ing it, would we augment democracy by adding additional
6 elective offices? Would it perhaps be wise to have a
7 director of the Sales Tax Division an elected official,
8 thus providing an additional elected official, and in
9 addition providing a check and balance within the
10 Comptroller's office, so that we would thus accomplish
11 two things.

12 It seems to me that the making of the argument
13 answers itself.

14 The truth of the matter is, democracy is in
15 essence the control by the people of their government. That
16 structure which best permits the people to exercise their
17 will, is that government which is most effective, most
18 democratic, and most what the people of Maryland are wait-
19 ing for.

20 If we construct a multi-headed executive, a
21 troika, we will in essence have defeated the purpose for

1 which we are here assembled.

2 Democracy can only operate when responsibility
3 is clearly assigned to a single individual; that individual
4 after being given the power to discharge his responsibility
5 is periodically called to account to the people for his
6 stewardship.

7 Lower the lines of authority, lower the lines
8 of responsibility, then you diminish the democratic process.

9 I should like to conclude my few remarks here
10 in presenting this portion of the Majority Report by a quo-
11 tation from Alexander Hamilton, writing on this precise
12 problem, which arose in the great convention of all
13 times, the convention that wrote our existing Federal
14 Constitution. This question was debated at length, pre-
15 sumably based on the notes of that Convention on the Floor
16 of that body, and was subsequently the subject of much
17 debate among the people at the time when the document was
18 up for final ratification.

19 The root paper perhaps of all in terms of
20 checks and balances is No. 70 of the Federalist paper, and
21 with your indulgence, I should like to conclude by reading

1 two brief selections from that document, because it seems
2 to me this puts at rest once and for all this question
3 of the necessity for checks and balances within a single
4 branch of government. Hamilton wrote: "It is evident
5 from these considerations that the plurality of the Execu-
6 tive tends to deprive the people of the two greatest
7 securities they can have for the faithful exercise of
8 any delegated power. First, the restraints of public
9 opinion, and secondly, the opportunity of discovering with
10 facility and clearness the misconduct of the persons they
11 trust."

12 If you have clear line of authority, if you
13 have frequent opportunities to call those people to ac-
14 count, then you have true democratic government.

15 Finally, Hamilton says: "The executive power
16 is more easily confined when it is won; that it is far more
17 safe, there should be a single object for the jealousy
18 and watchfulness of the people; and in a word, that all mul-
19 tiplication of the Executive is rather dangerous than
20 friendly to liberty."

21 I urge this Convention to consider carefully the

1 multi-headed Executive Department.

2 If we do not have an Executive competent to
3 meet with dispatch the problems which face the State, to
4 that extent I suggest this body will not have done its job.

5 THE CHAIRMAN: Are there any questions of the
6 Vice-Chairman for purposes of clarification? Delegate
7 Malkus.

8 DELEGATE MALKUS: Mr. President, since we do
9 not have the prepared speech, is it possible that we could
10 have this prepared speech before we question the Vice-
11 Chairman? I refer to that point where he talks about
12 democracy, and it bothers me a little bit. To me, he is
13 talking about autocracy.

14 THE CHAIRMAN: Delegate Malkus, is your question
15 whether you can have a copy of the text of Delegate Adkins's
16 presentation of the Committee Report?

17 DELEGATE MALKUS: Yes, sir.

18 THE CHAIRMAN: Delegate Adkins, do you have
19 written text that you could make available to Delegate
20 Malkus?

21 DELEGATE ADKINS: No, sir.

1 THE CHAIRMAN: The answer is No. Is there a
2 further question?

3 DELEGATE ADKINS: It has not been transcribed.

4 DELEGATE MALKUS: Mr. President, I mean I know
5 we have just postponed one important subject matter. Is
6 it possible that we -- I know we have plenty of time and
7 plenty of help here, could we have a copy of what my good
8 friend, Dale Adkins, has said, so that we can specifically
9 question him on what he has said?

10 THE CHAIRMAN: He has just indicated to you
11 there is no copy available, and we certainly cannot adjourn
12 the Convention until it can be prepared. If we did that,
13 Delegate Malkus, we wouldn't move on any matter.

14 DELEGATE MALKUS: Is it my understanding of the
15 Chair that anybody can make any statement at all, and we
16 have got to depend on our ears for what we have heard?

17 THE CHAIRMAN: I think that is true.

18 DELEGATE MALKUS: Mr. President, of course,
19 everybody knows that you are smarter than I am.

20 THE CHAIRMAN: That remark is uncalled for,
21 Delegate Malkus.

1 DELEGATE MALKUS: Well, if you don't mind,
2 sir --

3 THE CHAIRMAN: The matter before the House now
4 is questions to the Vice-Chairman. Please confine your-
5 self to such questions.

6 DELEGATE MALKUS: I would like to know, before
7 I vote on the subject matter, several clarifications of
8 several statements that the gentleman made.

9 Now, if we cannot have them, is it in order that
10 he re-read some of the statements that he made, and as he
11 re-reads them, then possibly we could go ahead and question
12 him on the subject matter as he re-reads them?

13 THE CHAIRMAN: The Chair rules that is not in
14 order. Do you have a further question?

15 DELEGATE MALKUS: Mr. President, there is no
16 sense in me asking any further questions because, like
17 I said many times before, this is a stacked deck.

18 THE CHAIRMAN: Are there any further questions
19 of the Vice-Chairman for purposes of clarification? Dele-
20 gate Dorsey.

21 DELEGATE DORSEY: Judge Adkins, isn't it true

1 that when this government was formed, there were two schools
2 of thought: One advocated by Hamilton, that there should
3 be a government far removed from the people, and another
4 advocated by Jefferson that the power of government should
5 be diffused among the masses; and wasn't it/^{the}Jeffersonian
6 theory adopted?

7 DELEGATE ADKINS: I would suggest to you, sir,
8 that there have always been two schools of thought on
9 practically every political issue, including this one.
10 I would also suggest that perhaps the Hamiltonian theory
11 was adopted insofar as the Constitution of the United
12 States was concerned.

13 THE CHAIRMAN: Delegate Dorsey.

14 DELEGATE DORSEY: Wasn't the Hamiltonian
15 theory that there should be a dictator form of government,
16 and Jefferson believed in a democracy of men, with the
17 power of government diffused among the masses?

18 DELEGATE ADKINS: I would suggest the use of
19 the term "dictatorship" is completely out of order. Any
20 elected government is responsive to the people where its
21 elected officials periodically report to and receive the

1 ratification of those people.

2 DELEGATE DORSEY: Didn't Hamilton advocate an
3 aristocracy of wealth?

4 DELEGATE ADKINS: I am not aware of that. The
5 Federalist papers to which I refer, do not discuss that
6 problem.

7 THE CHAIRMAN: Delegate Dorsey.

8 DELEGATE DORSEY: It wouldn't hurt a bit if you
9 read a little bit about Jefferson.

10 DELEGATE ADKINS: I will be happy for you to do
11 so when your turn comes.

12 THE CHAIRMAN: Are there any further questions
13 of the Vice-Chairman? Delegate Frederick.

14 DELEGATE FREDERICK: I have a simple question.

15 DELEGATE ADKINS: No question is simple.

16 THE CHAIRMAN: Delegate Frederick.

17 DELEGATE FREDERICK: If the Constitution is
18 silent on this point of Controller, the General Assembly
19 could establish such an office?

20 DELEGATE ADKINS: I should say if the Constitu-
21 tion is silent, the General Assembly could establish an

1 elected Comptroller who, however, would not be the head
2 of a principal department, and under the terms of the
3 Committee's later recommendations, would not be the chief
4 fiscal officer of the State. They could, however, provide,
5 as I understand it, for an elected Comptroller having such
6 powers short of that as they saw fit to give it to him.

7 THE CHAIRMAN: Delegate Frederick.

8 DELEGATE FREDERICK: If they do provide such an
9 officer, could the Governor veto such a statute?

10 DELEGATE ADKINS: It would have to be provided
11 by law. It would be subject to gubernatorial veto. It
12 could be passed over his veto by the requisite constitutional
13 majority.

14 DELEGATE FREDERICK: Then it is possible you
15 would need two-thirds vote rather than simple majority
16 to establish control of any sort?

17 DELEGATE ADKINS: I have forgotten whether it is
18 two-thirds or three-fifths. In any event, they would need
19 that, assuming the Governor was disposed to veto the
20 legislature, yes.

21 THE CHAIRMAN: Any further questions of the

1 Vice-Chairman? Delegate Chabot.

2 DELEGATE CHABOT: Judge Adkins, if we were to
3 agree with the Committee's Report on this point but dis-
4 agree with the Committee's Report on Point 1, the Public
5 Works Board, in what way would this restrict our actions
6 as we proceed further on in the Constitution? Do you feel
7 that we could then establish such a board and designate
8 some officer to serve? Are we restricted simply in the
9 use of the word "Comptroller" as the designation of the
10 officer?

11 DELEGATE ADKINS: No. I would say the answer
12 to that is clearly No. If you agree with the Majority Report
13 here and eliminate the Comptroller as an elected office,
14 it is still before the Convention to construct, to either
15 deny a Board of Public Works constitutional status or to
16 construct such a Board of Public Works for the Constitution,
17 as the Convention thinks wise. There is no magic in having
18 an elected Comptroller as a member of the Board of Public
19 Works if that is your question. I am not sure that answers
20 it.

21 THE CHAIRMAN: Delegate Chabot.

1 DELEGATE CHABOT: I also am not sure of the
2 language of the Report that we are voting on; the office of
3 the Comptroller not be provided for in this Constitution,
4 so that if we decide, if we agree with the Committee at
5 this stage, and still determine to create a Board of Public
6 Works, have we not decided that the Comptroller, whatever
7 that may mean, cannot be a member of this Board of Public
8 Works?

9 DELEGATE ADKINS: No, not unless you decide
10 that the Board of Public Works, as the Convention would
11 propose, is exactly identical with the existing Board of
12 Public Works, which is not yet before the Convention. You
13 can have a Board of Public Works composed of the Governor,
14 a Treasurer, the post-auditor, any set number of officials
15 that the Convention saw fit to write into the provision for
16 a Board of Public Works.

17 THE CHAIRMAN: Delegate Chabot.

18 DELEGATE CHABOT: Then, do I understand correctly,
19 then, that our decisions on Items 2 and 3 would not in
20 any way prevent us, if we decided that there should be a
21 Board of Public Works, from constituting it any way we

1 wanted to?

2 DELEGATE ADKINS: I see no logical inconsistency,
3 unless, I think I should add this caveat, unless you were
4 to decide that you wanted a Board of Public Works composed
5 of an elected Comptroller, and an elected Treasurer. In
6 that event, I think you would have an inconsistency, but not
7 otherwise.

8 THE CHAIRMAN: Delegate Pullen.

9 DELEGATE PULLEN: Mr. Adkins, it is my under-
10 standing that the Commission, or a Committee determines
11 the estimates of income for the State. My question, sir,
12 is this: When the final statement of income is put in
13 the Executive Budget, which is the Governor's budget,
14 does the Governor have a right to change that? Are they
15 his figures or are they the figures of the Commission?

16 DELEGATE ADKINS: Are you directing your ques-
17 tion to the extent of the Governor's right to change the
18 Board of Revenue Estimates' figures for the purpose of
19 determining whether the budget is balanced or not?

20 DELEGATE PULLEN: It has a bearing upon the
21 necessity of an elected Comptroller. I simply want to know

1 the authority vested in the Governor in such instance.

2 THE CHAIRMAN: Delegate Pullen, Delegate Adkins
3 was asking whether you were referring to the authority of
4 the Governor to disregard an estimate of the Board of
5 Revenue Estimates.

6 DELEGATE PULLEN: Precisely.

7 DELEGATE ADKINS: I would stand to be corrected
8 on this. My thought is, I have not personally researched
9 this problem, but my thought is that the Governor is
10 bound by the revenue estimates produced by the Board of
11 Revenue Estimates, and to that extent is suffering, I think,
12 one of the severest limitations on the gubernatorial power
13 that a governor can have, and indeed I consider that to be
14 one of the very root problems involved in this tri-headed
15 Executive that we now have.

16 THE CHAIRMAN: Delegate Pullen.

17 DELEGATE PULLEN: Then it is your theory that an
18 elected governor, who may or may not have administrative
19 ability, has the omniscience to decide exactly how much
20 revenue we are going to have whether he has competence
21 or not?

1 DELEGATE ADKINS: I don't think an elected
2 governor has that omniscience any more than an elected
3 Comptroller. I think both are forced to rely to the
4 extent that they can on the best talent expert in the
5 field, that they can elicit on the best mechanical devices
6 for compiling the information and making the necessary fore-
7 casts, but I see no reason why the Governor isn't equally
8 as competent to select the personnel to do this job as is
9 an elected Comptroller.

10 THE CHAIRMAN: Delegate Pullen.

11 DELEGATE PULLEN: My next question, sir, is
12 this: Would you have the Governor rely upon the estimates
13 of the Budget Bureau, the head of which is required to
14 have no educational or professional qualifications?

15 DELEGATE ADKINS: I would require him to rely on
16 such personnel as the Governor of this State elected by
17 the people saw fit to vest without authority. If he feels
18 that an education is not necessary, then I think that is a
19 matter that the people can call him to account for later.

20 I cannot conceive that a governor of this
21 State competent to be Governor and to receive the endorse-

1 ment of more than 50 per cent of the elected voters would
2 act in that irresponsible manner that you suggest.

3 THE CHAIRMAN: Delegate Pullen.

4 DELEGATE PULLEN: I am not suggesting, sir. I
5 am asking you for facts. Would you turn over the estimates
6 of income to the Budget Bureau who is ^{an} appointee of the
7 Governor?

8 DELEGATE ADKINS: I would vest it in the Execu-
9 tive Department in such manner as the Governor in the
10 discharge of his responsibilities thought necessary to
11 perform the function, yes.

12 THE CHAIRMAN: Delegate Pullen.

13 DELEGATE PULLEN: Could you be more precise,
14 sir?

15 DELEGATE ADKINS: I don't really see how I can
16 be much more precise.

17 THE CHAIRMAN: Delegate Pullen.

18 DELEGATE PULLEN: That is what I am afraid of.
19 You quoted --

20 DELEGATE ADKINS: I am not Governor, Doctor.
21 If I were Governor, I could be more precise.

1 THE CHAIRMAN: Delegate Pullen.

2 DELEGATE PULLEN: You referred to the Rubicon.

3 I go back to Rome, too. I have had some experience with
4 the budgets, and there is a statement which goes something
5 like this: Not being ignorant of misfortune, I have learned
6 to pity those who have misfortune. I have learned something
7 of this power that you are talking about. When Mr. McKel-
8 din was Governor, I thanked God for Governor Tawes.

9 THE CHAIRMAN: The questions are supposed to be
10 directed to the Vice-Chairman of the Committee. Oppor-
11 tunity for debate will be afforded you later. Delegate
12 Pullen.

13 DELEGATE PULLEN: This is not a debate, sir.
14 This is just a statement of fact to lay the grounds for a
15 question.

16 Now, the next question, when Mr. Tawes was
17 Governor, I thanked God for Louie Goldstein.

18 Now, that is said with kindness to all of them.
19 The question I have here is, you are centering, if I under-
20 stand it, all power of handling the budget in one individual.
21 May I ask you a simple question about the power of the

1 Governor?

2 DELEGATE ADKINS: May I correct your assumption,
3 which is not accurate? We are vesting the power of the
4 budget in the Governor and the elected representatives of
5 the people, meeting in the General Assembly; so it is not
6 fair to say that the power is vested in one person.

7 THE CHAIRMAN: Delegate Pullen.

8 DELEGATE PULLEN: I accept that as a legalistic
9 answer.

10 Sir, do you know the control of the Governor
11 of Maryland over the salaries of every department head, of
12 the present President of the University of Maryland, of
13 every college president, of every college teacher, anyone
14 who works for the State who does not come under the present
15 standard salary board; is that correct?

16 DELEGATE ADKINS: I think if I understand your
17 multi-headed question, it is not correct. The salary at
18 the University of Maryland is established by the Board of
19 Regents at the University of Maryland; the salary of many
20 of the other heads of departments is established by the
21 legislature, and it is in no sense established by the

1 Governor.

2 THE CHAIRMAN: Delegate Pullen.

3 DELEGATE PULLEN: I respectfully refer you,
4 however, to Attorney General opinions to the contrary.
5 The Governor of Maryland does control the salaries of these
6 people in that --

7 THE CHAIRMAN: Delegate Pullen, you are still
8 concerned with questions to the Vice-Chairman.

9 DELEGATE PULLEN: I realize that, Mr. Chairman,
10 but if he doesn't know what I am talking about, he can't
11 answer.

12 THE CHAIRMAN: You will have the opportunity to
13 debate that question later. Right now, questions, please.

14 DELEGATE PULLEN: I am asking if he knows what
15 the facts are.

16 THE CHAIRMAN: He has answered you. I take it
17 he has answered you to the best of his ability. Delegate
18 Pullen.

19 DELEGATE PULLEN: May I respectfully suggest
20 he read the Attorney General's opinion on it?

21 THE CHAIRMAN: Now, do you have another question?

1 DELEGATE PULLEN: I have a lot of them. I had
2 better bring them up later.

3 THE CHAIRMAN: Are there any further questions
4 of the Vice-Chairman? Delegate Grant.

5 DELEGATE GRANT: Delegate Adkins, I wanted to ask
6 you for clarification of an answer you gave to Delegate
7 Frederick. Did you indicate that if the Comptroller was
8 a constitutional office that the powers that would be
9 assigned to the Comptroller would be different than if it
10 was created by the legislature and was not mentioned in the
11 Constitution?

12 DELEGATE ADKINS: I suppose the answer to that
13 would depend on the nature of the constitutional provision
14 that this Convention ultimately wrote, if it wrote one. If
15 the present constitutional, or if the Comptroller were given
16 by the new Constitution the same powers which he now has,
17 my answer would be that, Yes, they would be different from
18 the powers which a legislatively selected or legislatively
19 authorized Comptroller would have, because he now is what
20 amounts to the chief fiscal officer for the State, and I
21 suggest that under the proposal of the Committee, which

1 will come under consideration later, the legislature could
2 not create such a broad fiscal officer, free of guber-
3 natorial appointment. Does that answer your question?

4 DELEGATE GRANT: Yes.

5 THE CHAIRMAN: Are there any further questions
6 of the Vice-Chairman? Delegate Mason.

7 DELEGATE MASON: Delegate Adkins, did I under-
8 stand you correctly to state that if we have an elected
9 Comptroller that would constitute a plural Executive,
10 which isn't good for this State?

11 DELEGATE ADKINS: You certainly did not under-
12 stand me to say a plural Executive would be good for this
13 State. No. I do not think a plural Executive/^{good}for this
14 State.

15 THE CHAIRMAN: You misunderstood Delegate Mason,
16 I believe.

17 DELEGATE ADKINS: Maybe I did.

18 THE CHAIRMAN: Delegate Mason, would you restate
19 your question?

20 DELEGATE MASON: I said, wasn't it your testi-
21 money that the election of a Comptroller would constitute

1 a plural Executive?

2 DELEGATE ADKINS: It is my statement to the
3 extent that the executive power is vested in more than one
4 elected executive; to that extent we have a plural Execu-
5 tive. That isn't exactly the way I phrased the term, but
6 I think that is an accurate statement.

7 DELEGATE MASON: Isn't it a fact that most
8 States elect from six to eleven Statewide offices, whereas
9 Maryland only elects three?

10 DELEGATE ADKINS: There are only ten States
11 which elect a Comptroller. I do not have the figures on
12 the total. I could get them. I don't have them in my
13 mind. There are only ten States which elect a Comptroller,
14 which would be comparable to our Comptroller here.

15 THE CHAIRMAN: Delegate Mason.

16 DELEGATE MASON: But there are a considerable
17 amount of States that elect a fiscal officer by another
18 name, isn't that true?

19 DELEGATE ADKINS: Yes. There are other States
20 that elect a fiscal officer by another or different name.
21 Some call him a Treasurer. If you will bear with me a

1 minute, I think I have the information on that here maybe.
2 I don't have it. I thought I had it. I can get it.

3 THE CHAIRMAN: Delegate Mason.

4 DELEGATE MASON: I am not interested in the
5 numbers, Delegate Adkins, but isn't it a fact, as far as
6 Statewide offices, elected officials are concerned, that
7 most States elect from six to eleven Statewide officials?

8 DELEGATE ADKINS: Suffice it to say it is
9 certainly true that there are many States which have more
10 than two Statewide elected officers, yes.

11 THE CHAIRMAN: Delegate Mason.

12 DELEGATE MASON: Now, did I understand you
13 correctly that the Governor of Maryland would be a weak
14 governor?

15 THE CHAIRMAN: Is your question finished?

16 DELEGATE MASON: My question is, was it your
17 testimony that the Governor of Maryland is a weak governor?

18 DELEGATE ADKINS: I prefer to use the term
19 "weak type governor" because I don't think you can categor-
20 ize a single individual as being weak or strong. The
21 structure of Maryland's Executive Branch at the moment is,

1 I think generally conceded by people who have studied it
2 to be of the weak type. By that I mean, and I think they
3 mean, that the Governor does not have the power to choose
4 his own major appointees in the main; the only thing which
5 really keeps him from being a very weak governor is the
6 strong budget-making power which he now has, and which is
7 crucial, of course, to the exercise of his duties. I think
8 it is fair to say that the Governor, the structure of the
9 office of Governor is generally considered to be a weak
10 type, yes, in comparison with some other States, such as
11 New York and others.

12 THE CHAIRMAN: Delegate Mason.

13 DELEGATE MASON: Delegate Adkins, in determining
14 whether or not the structure of the office is weak or
15 strong, what are the indicia for making such a determin-
16 ation?

17 THE CHAIRMAN: Delegate Adkins.

18 DELEGATE ADKINS: I would suggest there are
19 three; first, whether or not he has a strong budget-making
20 power, which he does in Maryland; secondly would be the
21 question of whether or not he has the right to employ and

1 discharge major policy-making officials in his administra-
2 tion which in Maryland in many instances he does not. Did
3 I say there were three?

4 THE CHAIRMAN: Delegate Mason.

5 DELEGATE MASON: Yes.

6 THE CHAIRMAN: Delegate Adkins.

7 DELEGATE ADKINS: It is suggested to me from
8 the Floor that the power of reorganization is certainly
9 with one/which I would agree, and I would have to amend it to
10 four. I have one other in mind which escapes me for the
11 moment.

12 THE CHAIRMAN: Delegate Mason.

13 DELEGATE MASON: How about the right to veto?

14 THE CHAIRMAN: Delegate Adkins.

15 DELEGATE ADKINS: I wouldn't agree with that
16 because I don't believe there is any governor in the
17 fifty States that does not have the right to veto; so I
18 don't think that is a criteria of whether he is a strong
19 or weak governor.

20 THE CHAIRMAN: Delegate Mason.

21 DELEGATE MASON: I don't want to get into an

1 argument. North Carolina does not have the right to veto.

2 I would suggest you disagree with the Municipal
3 League which sets up these particular standards.

4 THE CHAIRMAN: Delegate Adkins.

5 DELEGATE ADKINS: It is perfectly possible.
6 find myself in disagreement with almost everyone on some
7 issues at some time.

8 THE CHAIRMAN: Delegate Mason.

9 DELEGATE MASON: Another indicia to determine
10 whether the Governor is strong is the question of the length
11 of his term, is that not correct?

12 THE CHAIRMAN: Delegate Adkins.

13 DELEGATE ADKINS: I might say that might be an
14 indicia if you are talking about a one- or two-year term,
15 yes. I do not consider that a critical condition, no.

16 THE CHAIRMAN: Delegate Mason.

17 DELEGATE MASON: A Maryland governor has a
18 four-year term and can be reelected; so you wouldn't
19 consider that an indicia.

20 THE CHAIRMAN: Delegate Adkins.

21 DELEGATE ADKINS: I don't think that makes him

1 a strong governor. It would make him strong if he
2 were up for reelection each year, but I don't think that
3 makes him a strong governor or a strong type.

4 THE CHAIRMAN: Any further questions, Delegate
5 Mason?

6 DELEGATE MASON: Do you know in the State of
7 Maryland the Governor appoints 60 per cent or more of his
8 department heads?

9 THE CHAIRMAN: Delegate Adkins.

10 DELEGATE ADKINS: I am curious to know the source
11 of your information. Do you mean 60 per cent or more?
12 What is the source of that statistic? I have not heard
13 that used.

14 THE CHAIRMAN: Delegate Mason.

15 DELEGATE MASON: If you will read the booklet
16 on States, they have all these things enumerated, and I
17 am sure you will find that out.

18 THE CHAIRMAN: Are there any further questions
19 of the Vice-Chairman? Delegate Child.

20 DELEGATE CHILD: Delegate Adkins, it is my
21 understanding that the majority of your Committee recom-

1 mended that there be no provision made for a Comptroller
2 in the Constitution so that you would strengthen the hand
3 of the Governor, is that right?

4 THE CHAIRMAN: Delegate Adkins.

5 DELEGATE ADKINS: Yes, sir, that is right.

6 THE CHAIRMAN: Delegate Child.

7 DELEGATE CHILD: What powers would you want
8 the Governor to have that he does not already have?

9 THE CHAIRMAN: Delegate Adkins.

10 DELEGATE ADKINS: Without going into a long,
11 lengthy list, one was recently mentioned. I think he
12 should have the power to control the Board of Revenue
13 Estimates so that we are not faced with a situation where
14 estimates can be raised or lowered by some person for
15 reasons perhaps other than the welfare of the State. I
16 think one of the chief functions of the Chief Executive
17 is to make an effective budget. I think in order to do
18 that, he has to make a forecast of income as well as outgo.
19 Now he controls outgo, but he does not forecast the income.
20 This is a serious impediment on any Chief Executive to
21 function effectively.

1 THE CHAIRMAN: Delegate Child.

2 DELEGATE CHILD: Would you not think that a
3 Comptroller who was competent would be of great aid to him
4 in making estimates of income?

5 THE CHAIRMAN: Delegate Adkins.

6 DELEGATE ADKINS: I see no reason why an ap-
7 pointed Comptroller would not be as competent as an
8 elective Comptroller.

9 THE CHAIRMAN: Delegate Child.

10 DELEGATE CHILD: Is it your opinion that an
11 appointed Comptroller would be more competent than an
12 elective Comptroller?

13 THE CHAIRMAN: Delegate Adkins.

14 DELEGATE ADKINS: It is the opinion of the
15 Committee that the Executive Branch would be strengthened
16 by having a chief fiscal officer, by whatever name we chose
17 to call it, responsible to the Chief Executive, yes.

18 THE CHAIRMAN: Delegate Child.

19 DELEGATE CHILD: Can you tell me, sir, how many
20 appointments the Governor now has?

21 THE CHAIRMAN: Delegate Adkins.

1 DELEGATE ADKINS: We can't give you a number,
2 no.

3 THE CHAIRMAN: Delegate Child..

4 DELEGATE CHILD: Can you give it to me within
5 twenty-five?

6 THE CHAIRMAN: Delegate Adkins.

7 DELEGATE ADKINS: No, I cannot.

8 THE CHAIRMAN: Delegate Child.

9 DELEGATE CHILD: Within fifty?

10 THE CHAIRMAN: Delegate Adkins.

11 DELEGATE ADKINS: I can't give you a figure that
12 I would be prepared to defend.

13 THE CHAIRMAN: Delegate Child..

14 DELEGATE CHILD: Do you think that the elimin-
15 ation of the Comptroller as a constitutional officer
16 would give him more appointive power, not only in the Comp-
17 troller itself but in a great many of the employees of his
18 office?

19 THE CHAIRMAN: Delegate Adkins.

20 DELEGATE ADKINS: I do not think so. I think
21 it would give him the power to appoint the principal head

1 of whatever general department was established to handle
2 the financial affairs of the State. The constitutional
3 provisions which are being proposed by the Committee do
4 nothing beyond that. It was perfectly within our concept
5 that all other appointments would be made by the depart-
6 ment head or **pursuant** to the Civil Service regulations
7 as they are now in effect.

8 This is, in no sense, a debate about whether
9 the 900 members of the Comptroller's office should be
10 appointed by the Governor or appointed by the Comptroller.
11 This is not involved in the issue as we see it.

12 THE CHAIRMAN: Delegate Child.

13 DELEGATE CHILD: My question was whether or
14 not you wanted to strengthen his hand by giving him more
15 appointive power.

16 THE CHAIRMAN: Delegate Adkins.

17 DELEGATE ADKINS: We do want to, in terms of
18 the top policy-making boards of the State so that when the
19 people attempt to assess the effectiveness of any adminis-
20 tration, they can look at the behavior, the policies and
21 implementations of one man; **now** there is no way to divide

1 the responsibility so that Joe can say John did it, or
2 John can say, No, I didn't do it; Joe did it. That is
3 precisely the situation we suggest we are in now. That
4 does not contribute to democratic popular control of the
5 Executive Branch of the government. I think that is
6 quite critical to our thinking and our position.

7 THE CHAIRMAN: Delegate Child.

8 DELEGATE CHILD: Did either of the former
9 governors testify that they didn't have enough power before
10 your Committee?

11 THE CHAIRMAN: Delegate Adkins.

12 DELEGATE ADKINS: There was only one former
13 governor who testified before our Committee, and that was
14 former Governor McKeldin. Governor Tawes was, of course,
15 a member of our Committee. He participated in the debate.
16 He did not testify. Governor McKeldin testified the State
17 would be better managed if it had an appointed Comptroller
18 and an appointed Attorney General. This was a reverse of the
19 testimony he gave before the Commission at which time he
20 testified he believed there should be an appointed Comp-
21 troller but not an appointed Attorney General. On

1 reflection he changed his position. That was Governor
2 McKeldin. We did have testimony from former Governor
3 Driscoll of New Jersey, a strong executive who was respon-
4 sible for rewriting the New Jersey Constitution which has
5 since become a model. His testimony was clearly on the
6 point that he felt this should be an executive function.

7 THE CHAIRMAN: Any further questions, Delegate
8 Child?

9 DELEGATE CHILD: That is all. Thank you,
10 Delegate Adkins.

11 THE CHAIRMAN: Any further questions of the Vice-
12 Chairman? Delegate Hostetter.

13 DELEGATE HOSTETTER: On Page 51 of the Draft
14 Constitution Commentary, neither the Comptroller nor the
15 Attorney General is, in the exercise of his primary func-
16 tion, a policymaker. The principal qualifications in
17 both positions are technical ability and expertise. Of
18 these the Governor is in a better position to judge than
19 the voters. Would you agree with that?

20 THE CHAIRMAN: Delegate Adkins.

21 DELEGATE ADKINS: I would agree with that in the

1 main, yes. I think you would have to make some minor
2 qualifications. To the extent that the Comptroller sits
3 in on Public Works, he is a policymaker, but as Comptroller
4 he is not.

5 THE CHAIRMAN: Delegate Hostetter.

6 DELEGATE HOSTETTER: Then who selects the
7 Governor?

8 THE CHAIRMAN: Delegate Adkins.

9 DELEGATE ADKINS: The people.

10 THE CHAIRMAN: Any further questions of the
11 Vice-Chairman? Delegate Boyce.

12 DELEGATE BOYCE: Mr. Vice-Chairman, were you pres-
13 ent in the Constitutional Commission hearing when former
14 Governor William Preston Lane, Jr., was heard on February
15 24?

16 THE CHAIRMAN: Delegate Adkins.

17 DELEGATE ADKINS: Yes, I was.

18 THE CHAIRMAN: Delegate Boyce.

19 DELEGATE BOYCE: Did you hear him say, "I don't
20 think there is any necessity for electing a Comptroller.
21 I believe the Governor should appoint him"?

1 THE CHAIRMAN: Delegate Adkins.

2 DELEGATE ADKINS: I recall that testimony, and
3 I think it is on the record.

4 THE CHAIRMAN: Delegate Boyce.

5 DELEGATE BOYCE: Were you present when Governor
6 Tawes testified before the Constitutional Convention
7 Commission?

8 THE CHAIRMAN: Delegate Adkins.

9 DELEGATE ADKINS: Yes.

10 THE CHAIRMAN: Delegate Boyce.

11 DELEGATE BOYCE: Were you there when he said he
12 believed that the Attorney General should be appointed
13 and that the Controller should be appointed; and his exact
14 words were, "Well, I would say that the Governor should
15 appoint the Comptroller, and he should appoint the Attorney
16 General."

17 THE CHAIRMAN: Delegate Adkins.

18 DELEGATE ADKINS: I will in fairness say -- of
19 course, Governor Tawes is here to speak for himself -- he
20 did say on reflection he called the Executive Director
21 and asked for the right to reconsider the statement that

1 he had made, and I have therefore not elected to quote the
2 earlier statement because I think everybody from time to
3 time changes their minds.

4 THE CHAIRMAN: Delegate Boyce.

5 DELEGATE BOYCE: Thank you, Mr. Vice-Chairman.

6 THE CHAIRMAN: Any further questions of the
7 Vice-Chairman? Delegate Henderson.

8 DELEGATE HENDERSON: Is it not true that the
9 tax collecting department is set up by a separate depart-
10 ment setup by the Governor?

11 THE CHAIRMAN: Delegate Adkins.

12 DELEGATE ADKINS: It is certainly true in most
13 States.

14 THE CHAIRMAN: Any further questions? The
15 Chair hears no further questions, and the Chair calls on
16 Delegate Sybert to present the Minority Report. Delegate
17 Sybert, come forward to the reading desk, please.

18 DELEGATE SYBERT: Mr. Chairman and fellow
19 delegates: I think we have before us in the question we
20 are now discussing a narrow issue, should the State
21 Comptroller be elected by the people as has been true for

1 the last one hundred and sixteen years, or should he be
2 appointed by the Governor because the Majority Recommend-
3 ations would provide that the chief fiscal officer whom
4 I equate with the Comptroller as we have known him, would
5 be the single head of a principal department; and under
6 Section 4.21, I think it is, of the Committee Recommend-
7 ations, the Governor would appoint the heads of all prin-
8 cipal departments, and those heads would serve at his will.
9 The Minority, of course, feels that the time tested method
10 of electing the Comptroller and thereby having an indepen-
11 dent chief fiscal officer of the State responsible directly
12 to the people and not the creature of the Governor, has
13 stood the test of time and has worked well for the State
14 and for the people. The presiding speaker, Vice-Chairman
15 Adkins said that we are coming to or maybe he said we have
16 crossed the Rubicon, that because of the growth of the
17 State, we must make the Governor, in effect, all powerful.
18 I don't think the simile is very apt because the crossing
19 of the Rubicon was made by Julius Caesar after he had been
20 successful in the Gallic wars; and when he came to the
21 Rubicon, a small stream, he had to decide whether to march

1 on Rome, notice having been served on him that if he came,
2 he would be met by force because others wanted to control
3 the government of Rome. Caesar had to determine whether
4 to march on Rome and assume the position of dictatorship.
5 He did march on Rome with his victorious army, he overcame
6 his opponents, he did set himself up as a dictator; and we
7 all know what happened. Caesar had his Brutus.

8 Friends, we don't want to put the State of
9 Maryland in the position of setting up a virtual dictator
10 which has stood us in such good stead since the Constitu-
11 tion of 1851, and under the plea that things have become
12 so big that we have to turn them over to one head, one
13 person elected by the people; and on that plea, if we heed
14 that plea, scrap the position of State Comptroller.

15 Just briefly, the State Comptroller, as I
16 think has been mentioned, has 900 employees serving under
17 him, all as far as I know protected by the merit system.

18 The office wasn't ever that big until after
19 World War II, increasing business of the State, manufac-
20 turing business of all kinds required the State government
21 to become larger, and the office has grown to its present

1 proportions. There are now twelve departments in the
2 office of the State Comptroller, very quickly those depart-
3 ments are the General Department, the License Bureau, the
4 Gasoline Tax Division, the Alcoholic Beverages Division,
5 the Income Tax Division, the Admissions Tax Division, the
6 Bureau of Revenue Estimates, the Retail Sales Tax Division,
7 the Central Payroll Division which handles the payroll
8 for 22,500 employees. Cigarette Tax Unit, the Data
9 Processing Division, and the Abandoned Property Division.
10 I think that order is the order in which those departments
11 were added to the Office of the Comptroller.

12 By law the Comptroller is the chief fiscal
13 officer of the State, the manager of the State's money.
14 He is charged, of course, with the collection of that
15 money and the management of the State's revenues and the
16 supervision and control of expenditures. One of the most
17 important functions of the Comptroller is to exercise a
18 check, a pre-check on the State's money as it is paid out.
19 When a voucher comes in from a department, the Controller
20 must and does check the voucher to ascertain whether it
21 is a matter which has been authorized by law or in the

1 budget. If he finds that it has been so authorized, he
2 then checks the funds in that account, and if the funds
3 are in the bank, he then approves the voucher and sends
4 it over to the State Treasurer for payment.

5 That pre-checking on the actual outgo of the
6 money before it is paid by the Treasurer is, the Minority
7 submits, a highly important function of the State Treasurer
8 and under the present setup of the law, the State Comptrol-
9 ler also supervises the auditing of the accounts of the
10 departments in the State government.

11 The auditor, of course, having been appointed
12 by the Governor. The law provides that he shall report
13 to the Comptroller, and the Comptroller shall supervise
14 his work. One of the most important functions, of course,
15 of the Comptroller has been to sit on and be a member of
16 the Board of Public Works. We submit that that function
17 is extremely important; the Board of Public Works that we
18 have heard so much about today is the most important board
19 in the State and is the last check on whether or not the
20 State's money or any programs authorized by the legislature
21 are to be committed, contracts given in accordance with the

1 law. Now, I submit there may have been some loose think-
2 ing as to the Governor's program, his ability to put
3 over a program. That is not a matter for the Board of
4 Public Works. When a Governor comes in or at any time
5 during his term, he must submit any program that he desires
6 to have inaugurated to the legislature in the shape of
7 requested legislation. The legislature determines whether
8 or not any projected program of the Governor is to be
9 approved by the passing of a bill in the legislature and
10 indeed by the provision of funds suggested in the govern-
11 ment budget. It is not the Board of Public Works that
12 determines what is to become of the Governor's program.
13 The function of the Board of Public Works is to pass on
14 the actual expenditure of the money and the matter of
15 accepting the proper bids and whether or not to sell this
16 piece of land at this price or at a higher price and whether
17 to purchase any given piece of land -- engaging at least
18 in all those functions. I reiterate that the Board of
19 Public Works does not and is not in a position to hamstring
20 or hobble any function or any program that the Governor
21 has succeeded in getting passed by the legislature.

1 In addition to the functions that we have been
2 talking about, the State Comptroller exercises two other
3 functions, neither one of which is administrative. The
4 Comptroller, when he makes regulations for the divisions
5 in his office, Sales Tax, Commissions Tax, Income Tax
6 and the rest, he is exercising a delegated legislative
7 product, a power delegated him by the legislature.

8 Likewise, when the Governor or his designee
9 in his office holds hearings on the questions that are
10 very often raised as to the application of any tax imposed
11 by the legislature or questions the applicability to him
12 of any such tax, the Comptroller or his designee must
13 make findings of fact and on those facts determine whether
14 the taxpayer is liable to pay the tax in question. In
15 doing that, in performing that function, the Comptroller
16 performs a quasi-judicial power, just the same as any
17 quasi-judicial board of the State, for instance, the Mary-
18 land Tax Court performs a quasi-judicial power so that the
19 State Comptroller is not confined to administrative powers;
20 he also performs those delegated legislative powers and
21 quasi-judicial powers.

1 I submit, and I think this is fair that the
2 Majority, both in their arguments here and in their Report
3 and Memorandum have dealt in generalities as to the manner
4 in which the existence of an independent State Comptroller
5 or indeed the functioning of the Board of Public Works
6 has placed hobbles on the government, has reduced his
7 administrative powers. I have not heard of specific
8 instances of any such reduction in the power of the
9 Governor. You all heard a great many generalities but
10 nothing specific. The Minority feels that this plan which
11 has been in existence so long entailing an independent
12 Comptroller to handle the money of the State, to collect
13 it, to see that it is safely kept and to manage it has
14 been one of the best collectors we have had.

15 Indeed, the Governor would not be able, not have
16 the time to supervise the close supervision on the collec-
17 tion of the money and the management of it that an inde-
18 pendent Comptroller does have.

19 When the matter came up in New York, the New
20 York Times, when the matter came up I mean in connection
21 with the recent Constitutional Convention in New York,

1 the New York Times in an editorial came out in favor of
2 keeping the chief fiscal officer elected, saying it is a
3 good thing to keep the chief fiscal officer and Comptroller
4 independent. As a matter of fact, the Baltimore News
5 American has taken the same stand, that the State Comp-
6 troller or chief fiscal officer, and the Attorney General
7 should be elected by the people; that that right to elect
8 those high offices should not be withdrawn from the people.

9 As may have been said, forty-two States in this
10 country elect their chief fiscal officer, no matter what
11 he is called. Forty-two States elect their chief fiscal
12 officer. As to whether or not an elected independent
13 Comptroller has been good or not for the State, Governor
14 Tawes in the Executive Committee stated that he is in
15 favor of electing the Comptroller, and the Governor also
16 stated that Maryland is among the strongest States, that
17 is, in Maryland the Governor is stronger than in the great
18 majority of the other States.

19 It seems a little strange that the majority on
20 the Committee voted to elect the State's Attorney who
21 prosecutes criminals at a local level but voted to have the

1 Governor appoint the two high Statewide officers of Attor-
2 ney General and Comptroller. I am not going to belabor
3 the point any further. We all know what the issue is.
4 As Delegate Scanlan said the other day, we are changing
5 a great many things, and I understood him to say, Don't
6 lay it on too thick. I don't think and the Minority
7 doesn't think, and I am sure a great many other delegates
8 don't think that we should take away from the people the
9 right that they have had so many years to elect the Comp-
10 troller and the Attorney General and to put the Governor
11 in a position where he will amount in fact and actuality
12 to a virtual dictator.

13 I therefore offer a motion to strike the
14 work "not" out of the second Committee Recommendation.

15 THE CHAIRMAN: Hold your motion for a while
16 until we finish the question period.

17 Are there any questions of the Minority Spokes-
18 man? Delegate Maurer.

19 DELEGATE MAURER: Judge Sybert, I wonder if you
20 are aware of the editorial in the New York Times called
21 "Constitution, Five Departments" in which it said, "The new

1 charter contains an unnecessary and potentially dangerous
2 grant of extended authority to the Comptroller. In addi-
3 tion to those powers necessary to fulfill his responsibility
4 for auditing the State's accounts, he is to have such other
5 powers as are vested in him by this Constitution or by
6 law." That would permit the legislature to grant him
7 powers far outside his own office. Were you aware of
8 that, sir?

9 THE CHAIRMAN: Delegate Sybert.

10 DELEGATE SYBERT: I wasn't aware of that par-
11 ticular editorial, but I want to point out we have never
12 had the State Comptroller an auditor of the State's
13 accounts.

14 THE CHAIRMAN: Delegate Maurer.

15 DELEGATE MAURER: You referred to the elected
16 Comptroller in the New York State Constitution, but it is
17 my understanding, and I wonder if it is yours, that the
18 Comptroller in the New York State is the name given to
19 the auditor and not to the manager of the fiscal affairs of
20 the State?

21 THE CHAIRMAN: Delegate Sybert.

1 DELEGATE SYBERT: I don't know what they call
2 him in the proposed Constitution, but they certainly have
3 a chief fiscal officer in New York, and the editorial that
4 I referred to referred to the chief fiscal officer. I
5 am looking for the exact wording of it.

6 We, the minority, make a brief allusion to the
7 point I am talking about on Page 2 of the Minority Report
8 to the following effect: "As the New York Times recently
9 observed in reference to the election of the State Comp-
10 troller of New York, 'Keeping The Fiscal Watchdog Indepen-
11 dent Makes Sense'."

12 THE CHAIRMAN: Delegate Maurer.

13 DELEGATE MAURER: Wouldn't it be true that the
14 function of the controlled audit would be a fiscal watchdog?

15 DELEGATE SYBERT: Possibly a month, six months
16 or a year and a half after the fact, after the money is
17 stolen if we have dishonesty, or after it is gone if we
18 have inept officials appointed to the government.

19 THE CHAIRMAN: Delegate Maurer.

20 DELEGATE MAURER: If the Comptroller in New
21 York is the auditor, and he is the post-auditor, and he

1 is considered the fiscal auditor, wouldn't the same degree
2 of success in being a watchdog apply to the post-audit
3 function here?

4 THE CHAIRMAN: Delegate Sybert.

5 DELEGATE SYBERT: The Minority thinks we better
6 watch the horse before it is stolen **than** wait maybe six
7 months or a year longer.

8 THE CHAIRMAN: Delegate Henderson.

9 DELEGATE HENDERSON: Is it not true that under
10 the Federal setup the Bureau of Internal Revenue fulfills
11 the tax collecting function which we have delegated to the
12 Comptroller in this State?

13 THE CHAIRMAN: Delegate Sybert.

14 DELEGATE SYBERT: As far as I know, that is
15 correct.

16 THE CHAIRMAN: Delegate Henderson.

17 DELEGATE HENDERSON: Isn't it true that the
18 Comptroller generally exercises the auditing function
19 performed by the Comptroller?

20 THE CHAIRMAN: Delegate Sybert.

21 DELEGATE SYBERT: Not as far as I know, sir.

1 The Comptroller generally exercises a post-audit function.

2 THE CHAIRMAN: Delegate Henderson.

3 DELEGATE HENDERSON: That would come under the
4 legislature as to what we approved a few days ago, would
5 it not?

6 THE CHAIRMAN: Delegate Sybert.

7 DELEGATE SYBERT: Yes, that would be months or
8 maybe years after the fact.

9 THE CHAIRMAN: Delegate Henderson.

10 DELEGATE HENDERSON: The Bureau of Internal
11 Revenue has never been an elected official, has he, in the
12 Federal setup?

13 THE CHAIRMAN: Delegate Sybert.

14 DELEGATE SYBERT: Not as far as I know.

15 THE CHAIRMAN: Delegate Byrnes.

16 DELEGATE BYRNES: Dealing with the question of
17 in
18 the separation of powers/ the present Constitution, in
19 the text that has been submitted to us by the Committee,
20 we say that the executive powers should be vested in the
21 Governor and that he shall faithfully execute the laws. I
am having difficulty understanding -- I might ask this,

1 first of all, sir, do you think that the administration
2 of fiscal affairs is part of the executive power or not?

3 THE CHAIRMAN: Delegate Sybert.

4 DELEGATE SYBERT: I didn't catch the last two
5 or three words that you said.

6 THE CHAIRMAN: Delegate Byrnes.

7 DELEGATE BYRNES: Would you say that the ad-
8 ministration /the fiscal affairs of the State, are or are
9 not within the executive power that we have vested, or
10 that it has been recommended that we vest, in the Governor?

11 THE CHAIRMAN: Delegate Sybert.

12 DELEGATE SYBERT: I think we have had virtually
13 the same situation in the present Constitution, but the
14 present Constitution has established a State Comptroller
15 one hundred fifteen or one hundred sixteen years ago, and
16 the Minority says that that arrangement has worked out
17 very well; and because of it, maybe, we haven't had any
18 scandal, fiscal scandals in the State. We think that sys-
19 tem should be continued because it proved its worth.

20 THE CHAIRMAN: Delegate Byrnes.

21 DELEGATE BYRNES: I have this problem. Since

1 the Constitution is beginning afresh, we are beginning
2 afresh in structuring this government in the State with a
3 new Constitution, don't we run into a possible problem
4 in the future if we don't define specifically what the
5 powers of this Comptroller should be? We run into the
6 problem that possibly the legislature could establish elec-
7 tive powers in someone not responsible to the Governor.
8 We would have some constitutional difficulty in the future.
9 This could be challenged or contested.

10 THE CHAIRMAN: Delegate Sybert.

11 DELEGATE SYBERT: By whom or what?

12 THE CHAIRMAN: Delegate Byrnes.

13 DELEGATE BYRNES: By a citizen.

14 THE CHAIRMAN: Delegate Sybert.

15 DELEGATE SYBERT: If the new Constitution pro-
16 vided for a governor with executive powers but that is modi-
17 fied by another amendment, I see no difficulty.

18 THE CHAIRMAN: Delegate Byrnes.

19 DELEGATE BYRNES: We would have to be very spe-
20 cific about what powers we are going to delegate to the
21 official we would call the Comptroller.

THE CHAIRMAN: Delegate Sybert.

1 DELEGATE SYBERT: You understand if the word "not"
2 is stricken out of the committee report, the second para-
3 graph of it, that at the proper time when the committee
4 recommendations themselves on the blue paper come before the
5 Convention Committee, proper amendments will be offered delin-
6 eating the powers and duties of the Comptroller?

7 THE CHAIRMAN: Delegate Byrnes.

8 DELEGATE BYRNES: I appreciate that remark, and
9 I also wanted to clarify in my own remarks whether or not
10 these matters were within the executive power that we are
11 vesting in the Governor. Another problem I had, Judge Sy-
12 bert, is really trying to define in my own mind precisely what
13 the functions of the Comptroller are in the policy-making
14 area. As I understand your comments, he is responsible for
15 what you call the pre-payout checks which I presume are done
16 by the merit system employees rather than the Comptroller him-
17 self on a daily basis; and you suggested that the auditor
18 reports to the Comptroller, and that has been vested in the
19 legislature. There is also the legislatively delegated and
20 quasi-judicial powers. Would you say that an appointed Comp-
21 troller could do that less ably than an elected Comptroller,
namely the legislatively delegated power and

1 the quasi-judicial power?

2 THE CHAIRMAN: Delegate Sybert.

3 DELEGATE SYBERT: I think a crony appointed
4 by the Governor, that more often the appointee of the
5 Governor, sometimes I think it might be a crony of the
6 Governor who doesn't know too much about fiscal affairs
7 would be less apt to be as efficient as an elective Con-
8 troller who has had to expose himself to the people on
9 his excellent record and satisfy the people so as to elect
10 him Comptroller of the State, I think it is safer under
11 our present system.

12 THE CHAIRMAN: Delegate Byrnes.

13 DELEGATE BYRNES: I am trying to narrow down
14 in my own mind what your position is. You certainly stated^{it}/
15 very adequately. Let me make sure that I have it clarified.

16 It seems to me you might be saying that the
17 chief function, the great asset to the people in the
18 Comptroller is found by the fact that he sits on the Board
19 of Public Works, not so much that he is Comptroller and head
20 of the Treasury Department. I think this is a very funda-
21 mental distinction that Judge Adkins alluded to when he said
~~that the Comptroller's responsibilities, qua Comptroller, or~~

as the official known as the Comptroller is one responsibility
1 but his function on a Board of Public Works is an entirely
2 different one, or to put it another way, anyone could
3 sit on the Board of Public Works and perform this indepen-
4 dent watchdog function without necessarily also having
5 to be head of the Treasury Department; and it seems that --
6 I am questioning whether or not this is a correct analysis,
7 whether or not this dichotomy can be made because if it can,
8 it is important that we do so because it would seem that
9 we could have this kind of elective official, and at the
10 same time strengthen the Executive Branch; but at the same time
11 not let the Treasury Branch be headed by an elective
12 position.

13 THE CHAIRMAN: Delegate Sybert.

14 DELEGATE SYBERT: I think the people of this
15 State in 1951, and you might say confirmed ever since by
16 reason of the fact that it has never been changed by
17 constitutional amendment, conceived that a person such as
18 the Comptroller who has or acquires an intimate working
19 knowledge of all facets of State government, all the
20 executive departments, is perhaps the best State official
21 to sit on the Board of Public Works because of their

1 intimate knowledge of State affairs.

2 THE CHAIRMAN: Delegate Willoner.

3 DELEGATE WILLONER: Judge, I was wondering
4 whether or not any surveys were done to determine whether
5 or not the people knew that there was s Comptroller and an
6 Attorney General and whether or not the people -- I
7 remember one survey on Congress, about 10 per cent of
8 the people knew who their Congressman was. I wonder if
9 any surveys were done?

10 THE CHAIRMAN: Delegate Sybert.

11 DELEGATE SYBERT: I don't know if any precise
12 surveys were done to see how many people know the name
13 of our present Comptroller or Attorney General. But I
14 might say during two election campaigns, I tramped over
15 this State and went into virtually every hamlet and city
16 and to the countryside and almost every store and place of
17 business along with candidates for Comptroller and Governor;
18 and that was done at least twice in every county in the
19 State, and three or four times in the more populous areas,
20 and I think anyone interested in government, who either
21 reads the newspapers or turns out for political meetings,

1 pretty well knows who is running for Comptroller, forms
2 an opinion for his qualifications and votes accordingly
3 for the person of his choice.

4 THE CHAIRMAN: Delegate Willoner.

5 DELEGATE WILLONER: Did you study the percent-
6 age dropoffs between Governor and Attorney General?

7 THE CHAIRMAN: Delegate Sybert.

8 DELEGATE SYBERT: No particular study. There
9 always is a dropoff for voting from the Governor on down.
10 A substantial number of people vote for Governor and
11 apparently don't vote for anything else. But on the other
12 hand, the other candidates, Attorney General and Comp-
13 troller, get very large votes.

14 THE CHAIRMAN: Delegate Storm.

15 DELEGATE STORM: Judge Sybert, do you recall
16 in the Committee the original vote on this question was
17 10 to 10?

18 THE CHAIRMAN: Delegate Sybert.

19 DELEGATE SYBERT: The original vote was 10 to 10.

20 THE CHAIRMAN: Delegate Storm.

21 DELEGATE STORM: Then one gentleman changed his

1 vote to what became the majority, although saying that he
2 believed this should not be taken from the people, but he
3 wanted to enable the Committee to have a majority and
4 minority, is this correct?

5 THE CHAIRMAN: Delegate Sybert.

6 DELEGATE SYBERT: I understand this is correct.

7 THE CHAIRMAN: Delegate Storm.

8 DELEGATE STORM: Now, is it because the vote
9 was so closely divided that we are treating this Article
10 differently so that the **Majority** has to have 2 votes to
11 carry every question, and on the other Articles they only
12 require one vote? Is that the reason for this change?
13 Do you know? You do not?

14 THE CHAIRMAN: Delegate Sybert.

15 DELEGATE SYBERT: I am sorry, Delegate Storm,
16 I did not understand the whole of your question.

17 THE CHAIRMAN: Delegate Storm.

18 DELEGATE STORM: As I understand it, the **Chair**
19 explained earlier, that we are treating the Executive
20 Article differently from any other.

21 THE CHAIRMAN: Delegate Storm, the Chair has to

1 correct you on that. That is not what the Chair said.
2 This Article is being treated precisely as were the others.
3 We had previously a report of the Committee on State
4 Finance and Taxation, and any report that has a recommend-
5 ation as to what is not in the Constitution was treated
6 in exactly the same way.

7 DELEGATE STORM: Thank you, Mr. Chairman. I
8 am glad to get that explanation. I thought it was queer
9 that you required an evenly divided committee to go through
10 two steps. I am glad you made that clear.

11 THE CHAIRMAN: Delegate Bushong.

12 DELEGATE BUSHONG: Delegate Sybert, is it true
13 in the black spotting of President Truman's administration
14 were the appointees made in the Internal Revenue, and about
15 19 of them went to jail?

16 THE CHAIRMAN: Delegate Sybert.

17 DELEGATE SYBERT: I am not too clear about
18 that, Delegate Bushong. I don't have the facts at my
19 fingertips.

20 THE CHAIRMAN: Delegate Dorsey.

21 DELEGATE DORSEY: Delegate Sybert, isn't it

1 correct that on the first vote this Executive Committee
2 entertained on the office of Comptroller in the Constitu-
3 tion, the vote was 10 in favor, 9 opposed, and one
4 abstaining?

5 THE CHAIRMAN: Delegate Sybert.

6 DELEGATE SYBERT: I am not certain about that,
7 Delegate Dorsey. It was 10 and 10, and then it became 11
8 and 9; but you are possibly correct.

9 THE CHAIRMAN: Delegate Dorsey, do you have
10 a further question?

11 DELEGATE DORSEY: No, sir, but I think the
12 records of the Committee will speak as to that, and I
13 think it will verify what I asked Judge Sybert. On the
14 original vote it was 10 to retain the office of the Comp-
15 troller in the Constitution, 9 against, and one abstaining.

16 THE CHAIRMAN: Delegate Grant.

17 DELEGATE GRANT: Delegate Sybert, Delegate
18 Adkins referred to the fact that a number of the States
19 have a chief fiscal officer. In general terms, do the
20 duties of the chief fiscal officers in these other States
21 approximate the duties of the Comptroller in Maryland?

1 THE CHAIRMAN: Delegate Sybert.

2 DELEGATE SYBERT: As far as I know, they do.

3 THE CHAIRMAN: Delegate Grant.

4 DELEGATE GRANT: The second question I wanted
5 to ask you, I asked Delegate Adkins whether there would be
6 a difference between the powers **the office of** the Comptroller would have
7 in it as a constitutional office vis-a-vis a legislative
8 office. You referred to quasi-judicial duties. Would you
9 visualize he could perform these quasi-judicial duties
10 if it **were** a constitutionally created office rather than a
11 legislative office?

12 THE CHAIRMAN: Delegate Sybert.

13 DELEGATE SYBERT: Do I understand the question
14 to be if the Comptroller were not provided for in the Con-
15 stitution but provided for **by** simple legislation, the question
16 is whether or not he could have delegated to him quasi-
17 judicial powers?

18 THE CHAIRMAN: Delegate Grant.

19 DELEGATE GRANT: That is correct.

20 THE CHAIRMAN: Delegate Sybert.

21 DELEGATE SYBERT: Possibly so, but we are faced

1 with something that might have to be construed by the Court
2 of Appeals unless we clear it up in this present Consti-
3 tution. When the Convention proposes a judicial Article
4 saying all judicial power is vested in the Judiciary and
5 all executive power is vested in the Governor, unless
6 precise powers are vested to the Comptroller in the Con-
7 stitution, either directly or by necessary implication, the
8 question could be raised that any Comptroller established
9 only by statute could not exercise any powers which would
10 encroach or derogate from the powers of the Judiciary or
11 derogate from the powers of the public, that is one reason
12 why the Minority thinks the Comptroller should be provided
13 for in the Constitution and his powers spelled out.

14 THE CHAIRMAN: Delegate Grant.

15 DELEGATE GRANT: This would apply whether the
16 Controller was to be appointed by the Governor or elected
17 by the people.

18 THE CHAIRMAN: Delegate Bennett.

19 DELEGATE BENNETT: Judge Sybert. Did I under-
20 stand you to say that if the Comptroller did not serve on
21 the Board of Public Works, that would change your judgment

1 as to whether or not he should be elected?

2 THE CHAIRMAN: Delegate Sybert.

3 DELEGATE SYBERT: No, sir, I made no such state-
4 ment.

5 THE CHAIRMAN: Delegate Bennett.

6 DELEGATE BENNETT: One of the reasons you feel
7 he should be elected is because of this powerful position
8 he holds, isn't that correct?

9 THE CHAIRMAN: Delegate Sybert.

10 DELEGATE SYBERT: I think it is an added reason
11 why he should be provided for in the Constitution.

12 THE CHAIRMAN: Delegate Bennett.

13 DELEGATE BENNETT: As a purely fiscal officer,
14 he does not have as much policy-making powers. He is
15 not one of the wielders **or** the leaders of power as much as
16 a number of other officers, like the head of the State
17 Department of Education or the Chairman of the Roads
18 Commission or President of the University of Maryland.
19 Wouldn't those be officers of greater stature unless he
20 served on the Board of Public Works?

21 THE CHAIRMAN: Delegate Sybert.

1 DELEGATE SYBERT: They are officers of an en-
2 tirely different character, different functions and dif-
3 ferent character. The Minority submits that since for
4 one hundred sixteen years it has been found to work very
5 well to have an elected Comptroller as the watchdog of the
6 State's money, meaning the taxpayers' money, the Minority
7 does not feel that there is any reason for making a change.

8 THE CHAIRMAN: Delegate Bennett.

9 DELEGATE BENNETT: One last question. You just
10 now said that the Comptroller should be in the Constitution
11 and his powers spelled out specifically. Would that in-
12 clude service on a Board of Public Works?

13 THE CHAIRMAN: Delegate Sybert.

14 DELEGATE SYBERT: That is what the Minority pro-
15 poses, of course, but the ultimate result will depend on
16 what this Convention does with respect to the Board of
17 Public Works, I would say.

18 THE CHAIRMAN: Delegate Henderson.

19 DELEGATE HENDERSON: Judge Sybert, I was rather
20 surprised, you referred to the quasi-judicial powers of
21 the Comptroller. That is in connection with his decision

1 on tax matters, is it not?

2 THE CHAIRMAN: Delegate Sybert.

3 DELEGATE SYBERT: Yes, sir.

4 THE CHAIRMAN: Delegate Henderson.

5 DELEGATE HENDERSON: Isn't that the exercise of
6 such powers? Isn't it true that every one of his decisions
7 are reviewable by an appeal to the Tax Court which is an
8 appointive court which owes nothing to the Constitution
9 at all, and that that court also handles the deals from
10 assessors who are not constitutional officers?

11 THE CHAIRMAN: Delegate Sybert.

12 DELEGATE SYBERT: Yes, sir, that is quite cor-
13 rect. They have a further appeal to the courts.

14 THE CHAIRMAN: Delegate Henderson.

15 DELEGATE HENDERSON: You still maintain in
16 order to give him that quasi-judicial power, to put the
17 Comptroller in the Constitution?

18 THE CHAIRMAN: Delegate Sybert.

19 DELEGATE SYBERT: I said it would be much safer
20 and prevent possibly a good many judicial court deter-
21 minations as to the extent of his powers.

1 THE CHAIRMAN: Delegate Hanson.

2 DELEGATE HANSON: Would it then be your conten-
3 tion that every official of this State exercising quasi-
4 judicial power be an elected official and placed in the
5 Constitution?

6 THE CHAIRMAN: Delegate Sybert.

7 DELEGATE SYBERT: No, sir, I don't maintain
8 that. There are some areas which are much more important
9 than other areas. What the Minority says is that the
10 matter of State funds is much safer handled as it has been
11 for one hundred sixteen years. The Minority sees no reason
12 for a change by embarking on unchartered waters.

13 THE CHAIRMAN: Any other questions of the
14 Minority Spokesman? Delegate Byrnes.

15 DELEGATE BYRNES: Reverting to the same theme
16 of diluting of the executive power and the potential
17 constitutional problems it may present in the future,
18 would you suggest if the Comptroller is to be a constitu-
19 tional or elective officer that the phrase dealing with
20 the mandate to the Governor that he shall faithfully
21 execute the laws, this shall also be qualified so it

1 will not refer to laws dealing with the Treasury Depart-
2 ment?

3 THE CHAIRMAN: Delegate Sybert.

4 DELEGATE SYBERT: I don't think the phrase
5 which is in the present Constitution requires the Governor
6 to go out to arrest every malefactor, collect taxes -- I
7 mean, execute himself personally all executive powers.
8 It is contemplated, and necessarily so, that other officials
9 perform certain powers. We have a Constitution which, as
10 the present one does, says the Governor shall faithfully
11 execute the laws. It also sets up a Comptroller. The
12 statement as to the Governor is certainly modified as to
13 the constitutional provision for the Comptroller.

14 THE CHAIRMAN: Delegate Byrnes.

15 DELEGATE BYRNES: I suggest there might be a
16 conflict between the two personalities in the future, the
17 Governor acting in his position as one who is mandated to
18 execute the laws faithfully and the Comptroller has
19 the same requirement put on him. They both could be pur-
20 suing opposite goals and could very well clash in the
21 future, both faithfully executing the same laws.

DELEGATE SYBERT: There is no conflict.

1 THE CHAIRMAN: What is your question?

2 DELEGATE BYRNES: I think it has been answered
3 when he suggests there is no conflict. Thank you.

4 THE CHAIRMAN: Any further questions of the
5 Minority Spokesman? The Chair hears none. You may present
6 your motion, Delegate Sybert.

7 DELEGATE SYBERT: Mr. Chairman, I move that
8 Recommendation 2 of the Committee Report Memorandum EB-1
9 be amended by striking the word "not" on Page 1, Line 18.

10 THE CHAIRMAN: Is there a second to the motion?
11 (Whereupon, the motion was seconded.)

12 The Chair would have been disposed to have con-
13 tinued the debate if there had been some prospect of
14 reaching a vote by 11 o'clock. In view of the time allowed
15 in the Debate Schedule, this does not seem possible, and
16 the Chair thinks under the circumstances, it would be just
17 as well not to start so late in the evening. The Chair
18 recognizes Delegate Powers. Delegate Adkins?

19 DELEGATE ADKINS: At the risk of postponing
20 adjournment one minute, may I simply modify two statements
21 that I made in response to questions which I have since

1 found to be not entirely accurate?

2 I was asked a question as to whether or not the
3 Governor was bound by the estimates of the Board of Revenue
4 ^{been} Estimates. I have since / advised by my distinguished
5 colleague, Delegate Case, that in fact the Governor is not
6 so bound; he is, however, bound to transmit to the General
7 Assembly with his own estimates the report of **the board of**
8 **revenue** / estimates. I would simply suggest this does not change the t
9 thrust of my earlier statements. The second place where I
10 was not precisely accurate was in response to questions
11 as to whether the salary of the President of the University
12 of Maryland was set by the Governor. I was of the opinion
13 it was set by the Board of Regents. I have been advised
14 again by my distinguished colleague, Delegate Case, that
15 it is recommended by the Board of Regents to the Governor.
16 The Governor has the right to increase or reduce it. I
17 didn't want the session to terminate without correcting
18 those two factual mistakes.

19 THE CHAIRMAN: Delegate Powers.

20 DELEGATE POWERS: I move the Committee of the
21 Whole rise and report that it has not yet concluded con-

1 sideration of Committee Report No. EB-1.

2 (Whereupon, the motion was seconded.)

3 THE CHAIRMAN: All in favor, signify by saying
4 Aye; contrary, No. The Ayes have it. So ordered.

5 (The mace was replaced by the Sergeant at Arms.)

6 (Whereupon, at 10:15 o'clock p.m., the Committee
7 of the Whole rose, and the Convention reconvened.)

8 THE PRESIDENT: The Convention will come to
9 order.

10 The Committee of the Whole wishes to report
11 that it was had under consideration Committee Report No.
12 EB-1, still has it under consideration, and asks leave to
13 sit again.

14 Any announcements by committee chairmen.
15 Delegate Dorsey.

16 DELEGATE DORSEY: I would like to report --

17 THE PRESIDENT: Are there any announcements
18 by committee chairmen? Delegate Penniman.

19 DELEGATE PENNIMAN: The Committee on Style will
20 meet Tuesday and Thursday of this week, beginning at 9:30
21 p.m.

1 THE PRESIDENT: Any other announcements?

2 All delegates ~~not~~ present at roll call may
3 indicate their presence by the supplementary roll call.

4 Any other announcements? Delegate Dorsey.

5 DELEGATE DORSEY: This was the original session
6 this afternoon when we met at 2 o'clock? I answered the
7 roll after dinner, but I did not answer it before.

8 THE PRESIDENT: The journal Clerk will please
9 record Delegate Dorsey as being present at the earlier
10 session this afternoon.

11 Any other announcements? The Chair recognizes
12 Chairman Powers, Chairman of the Committee on Calendar
13 and Agenda.

14 DELEGATE POWERS: I would like to announce
15 that the plan and procedure from this point forward is
16 that we would meet after an hour and a half's recess on
17 Wednesday and Friday of this week and next week as well as on
18 Monday. We would meet until 10 p.m. So that will be
19 clear, we will have night sessions on Monday, Wednesday
20 and Fridays but not on Tuesday, Thursday or Saturdays.
21 We still plan to convene at 2 p.m. on Mondays and at 10 a.m.

1 the other five days of the week.

2 On Saturdays it will be 10 o'clock in the
3 morning until 6 p.m. with an hour and a half recess at
4 lunchtime.

5 I move we adjourn until 10 o'clock tomorrow
6 morning.

7 (Whereupon, the motion was seconded.)

8 All in favor, signify by saying Aye; contrary,
9 No. The Ayes have it. It is so ordered.

10 (Whereupon, the Convention adjourned at 10:17
11 o'clock p.m., to reconvene at 10 o'clock a.m. the follow-
12 ing day.)

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